

25 MARCH 1946

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Thursday, 25 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE R. B. PAL, Member
from India and HONORABLE JUSTICE E. H. NORTHCROFT,
Member from the Dominion of New Zealand, not sitting
from 0930 to 1600; HONORABLE JUSTICE B. V. A. ROLING,
Member from the Kingdom of the Netherlands, not sitting
from 0930 to 1045.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTIF.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI and UMEZU, who are represented by
5 counsel. The Sugamo Prison surgeon certifies that
6 they are ill and unable to attend the trial today.
7 The certificates will be recorded and filed.

8 MR. SASAGAWA: If the Tribunal pleases,
9 Mr. Mattice will continue reading.

10 THE PRESIDENT: Mr. Mattice.

11 MR. MATTICE: At page 111, III. With refer-
12 ence to the substance of the so-called Sino-Japanese
13 Affair which started with the Lukouchiao (Marco Polo
14 Bridge) Incident, the prosecution charged in the
15 related counts and the opening statements that Japan,
16 taking advantage of the Lukouchiao Incident, the same
17 type as the Mukden Incident, as an opportunity for a
18 large-scale military invasion, initiated an aggressive
19 war against China, expanded it from North China to
20 Central China, Shanghai, Hankow, Nanking and South
21 China and, by military, political and economic conquest
22 and domination of China, intended to make preparations
23 for the future war for domination over the world, or
24 to make China a base for it. The defense made it clear
25 that no responsibility for the outbreak of the

1 Lukouchiao Incident lay with Japan, and that despite
2 the fact that Japan exerted the utmost effort to
3 prevent this incident from developing into an unhappy
4 incident, with it as the origin, thoroughly sticking
5 to the principle of nonexpansion and settlement on the
6 spot, the incident spread against Japan's intention
7 owing to a provocative attitude on the part of the
8 Chinese, during which period Japan took self-defensive
9 action necessary for safeguarding her rights and
10 interests in China and for protection of her residents
11 there. The objective of her military action was to
12 cause the anti-Japan, or insulting Japan, regime
13 reflect its wrong and thereby to realize good relations
14 based upon morality and to bring about a normal situa-
15 tion of reciprocity and equality between Japan and
16 China.

17 ITAGAKI was War Minister in the KONOYE
18 Cabinet from 3 June 1938 to 4 January 1939, and also
19 War Minister (remaining in office) in the HIRANUMA
20 Cabinet from 5 January 1939 to 29 August of the same
21 year.^{1.}
22

23 While the accusation and proofs by the
24 prosecution of ITAGAKI's action during these periods
25 are extremely general and indirect and very few are
1. Ex. 110 (ITAGAKI's Personal History), Tr. 716.

1 directly and concretely pointed to the individual
2 responsibility of ITAGAKI, it seems that the prose-
3 cution's points lie in the matters of the disposition
4 of the China Affair in which he participated as the
5 War Minister, and of negotiations between Japan,
6 Germany and Italy, with the additional matters con-
7 cerning "Changkufeng Incident" (incident in the area
8 of Lake Khasan) and "Nomonhan Incident" (incident in
9 the area of Khalkin-Gol River). Therefore, for con-
10 venience sake that arrangement will be followed.

11 (i). The matter concerning the disposition
12 of the China Affair.

13 (a). It has been shown that, since ITAGAKI
14 had nothing to do with the Lukouchiao Incident, the
15 charge of Count 19 is unfounded.

16 (b). As evidence concerning what may be
17 called ITAGAKI's attitude on the disposition of the
18 China Affair, the prosecution presented exhibit 2200,
19 a news and editorial article called "Japanese Press
20 Comments" which appeared in the Japan Advertiser,
21 17 May 1939 to show that ITAGAKI expressed, in a
22 session of the Diet, his belief that, in order to
23 execute the Japanese policy to create the so-called
24 "New Order in East Asia," disputes with third powers
25

1. were unavoidable. This was, however, merely a
1 newspaper story which has little, if any, probative
2 value. Moreover, ITAGAKI,² the evidence shows, never
3 made such statement in the Diet Session at that time
4 and the prosecution introduced no evidence proving
5 that he did.

6 The prosecution also introduced exhibit
7 2201,³ the article titled "YONAI, ITAGAKI Abuse
8 Powers for Interference" in the "Japan Times and
9 Mail" dated 7 July 1939 in an attempt to show that
10 ITAGAKI agreed to crush interference by third powers
11 with his view that it was Japan's mission to establish
12 a new order in East Asia. However, this evidence, too,
13 is only a news article which is unfounded and without
14 certain source, and there is no evidence to show that,
15 as appeared in the paper, ITAGAKI, together with YONAI,
16 made such statement on that day, that is, on the eve
17 of the second anniversary of the outbreak of China
18 Affair. Assuming that there was such a statement it
19 was but a natural thing for the War Minister to state
20 in the situation existing at that time.

21 Thus the prosecution failed to prove anything
22 under any count with regard to ITAGAKI's fundamental
23

24 1. Ex. 2200, Tr. 15746.

25 2. Ex. 3316, Tr. 30312 (as shown above).

3. Ex. 2201, Tr. 15748.

attitude as War Minister and to his policy for
1 dealing with State affairs. ITAGAKI^{1.} admitted the
2 failure of the KONOYE declaration^{2.} of 16 January
3 1938 and exerted himself to realize the immediate and
4 peaceful settlement of the China Affair by moderating
5 and modifying the Japanese peace proposals to China
6 into concrete and more impartial and reasonable ones
7 so that China would accept them, unlike such as were
8 made through Mr. Trautman. Consequently, the KONOYE
9 statement^{3.} of 3 November of the same year was issued
10 and declared to the world that the Japanese government
11 only hoped to establish the relations of mutual aid
12 and cooperation ranging over all the fields of
13 politics, economy, culture, etc., establish inter-
14 national justice, achieve the anti-communism objective,
15 create a new culture, realize the economic combination,
16 between Japan and China, and thereby to establish a
17 new order to secure the eternal stability of East Asia.
18

19 In the interest of realizing those Japanese
20 policies, the policy of adjusting new relations
21 between Japan and China was decided by the Government
22 on 30th of the same month.^{4.}
23

24 Furthermore, as a detailed explanation, the

25 1. Ex. 3316, Tr. 30305 (as shown above).

2. Ex. 268, Tr. 3563.

3. Ex. 268, Tr. 3564.

4. Ex. 369, Tr. 3590.

1 KONOYE statement was issued on 22 December of the
2 same year.^{1.}

3 This further declared to the world, showing
4 the greatest concession practicable, that what Japan
5 wanted of China was not territory, nor reimbursement
6 of war expenses, but that Japan was willing, not
7 only to respect the sovereignty of China, but also
8 to withdraw her extraterritoriality, as well as to
9 positively give consideration to returning the settle-
10 ment.

11 ITAGAKI was supported by the witness
12 YAMAWAKI, Masataka,^{2.} who testified that: "With
13 regard to peace settlement between Japan and China,
14 War Minister ITAGAKI held fundamental ideals of re-
15 establishing friendship between them on broadminded
16 basis, respecting mutually each other's sovereignty
17 and territorial integrity and dealing with matters
18 cultural and economical on cooperative and reciprocal
19 basis."
20

21 War Minister ITAGAKI directed his efforts
22 to propel the so-called "KONOYE's Three Principles"
23 disclosed on December 22, 1938, which quite agreed
24 with his opinion. Thereby, the fact was proved that
25

1. Ex. 268, Tr. 3565.

2. Ex. 3301, Tr. 30103 (YAMAWAKI's affidavit).

1 ITAGAKI admitting, as Prime Minister KONOYE himself
2 did, the wrong of Japan's policy regarding the settle-
3 ment of the China Incident which had been pursued
4 prior to the government statement issued on 16 Jan-
5 uary 1938, exerted himself to revise and moderate
6 the policy adopted during the period of the predeces-
7 sors, and at the same time he made every possible
8 effort to bring about peace settlement between both
9 countries as soon as possible.

10 It should be noted that ITAGAKI did not take
11 any part in the Four Minister Conference at which
12 "the outline regarding the settlement of the China
13 Incident,"^{1.} exhibit 3262 which was affirmed by
14 witness HORINOUCHI, Kensuke at the time of the
15 HIROTA individual defense, was decided upon, in the
16 cabinet decision of the said outline,^{2.} nor in the
17 Imperial Conference opened on 11th January 1938 to
18 decide upon the national policy towards China,^{3.}
19 because he, as Chief of the 5th Division, was then
20 active on the North China front. Every possible effort
21 was made by ITAGAKI to revise and moderate the said
22 outline and the peace conditions through the good
23 offices of Mr. Trautman, based upon the outline,
24

25 1. Ex. 3262, Tr. 29772.

2. Ex. 3263, Tr. 29817.

3. Ex. 3264, Tr. 29837.

1 because he feared that these had a trend to aggres-
2 sion, which, therefore, would lead the future
3 diplomatic relations between both countries to
4 rupture.

5 The prosecution in the cross-examination of
6 ITAGAKI, exhibited to him an IPS document,^{1.} entitled
7 Collection of Decisions of the Five Ministers'
8 Conference, and said to have been found in the
9 Foreign Office of the Japanese Government, and sought
10 to have him identify it as a record of such decisions
11 during the period from June to October 1938. General
12 ITAGAKI was not able to identify the instrument as
13 being what the prosecution was intimating it was,
14 that is, a record of decisions of the Five Ministers'
15 Conference and told this Tribunal that as no record
16 of any kind was made or kept of conference decisions
17 he could not say this was such record. The plain
18 meaning of his statement in this regard was that the
19 instrument shown him was not a record of any such
20 decisions.^{2.}

22 On January 14, 1948, during the prosecution's
23 misnomered rebuttal the instrument (IPS 2570-B) was
24 offered and, over objection, admitted in evidence.

- 25 1. IPS document 2570-B, Tr. 30414.
2. Ex. 3457, Tr. 37350.

1 Not only did ITAGAKI himself tell this
2 Tribunal that this document was not a record of any
3 decisions of the conference, but the witness UGAKI,^{1.}
4 who was the only other person present at the confer-
5 ences who testified in this case, and, who is, there-
6 fore, best qualified to tell this Tribunal whether
7 or not such document is a record of the decisions
8 of the conference, told this Tribunal the document
9 is not a record of such decisions, but merely a
10 compilation of materials or proposals to be made to
11 said conferences, which someone gathered up for the
12 purpose of reference, thought and opinion; that the
13 only writings before said conferences were, at times,
14 written proposals which were submitted to the confer-
15 ence for study and discussion and that, as to any
16 of those, if any copies thereof were in the Foreign
17 Office, they would bear the witnesses' signature, as
18 he commonly signed them and handed them to subordinates.
19

20 This being the situation of the proof regard-
21 ing these alleged records of decisions of the Five
22 Ministers' Conferences, we most earnestly invite the
23 Tribunal's attention to the extremely doubtful char-
24 acter of the evidence thus permitted to be intro-
25 duced, over defense objection. There were other

1. Ex. 3899, Tr. 38811 (Affidavit of UGAKI).

1 persons present at the Five Ministers' Conferences
2 besides ITAGAKI and UGAKI, who are still living. The
3 prosecution might have called persons who were pres-
4 ent and obtained the truth about what the decisions
5 were. It did not attempt to do so, but contented
6 itself with an endeavor to establish the decisions
7 by documentary proof--which, as we can see, is cer-
8 tainly not the best evidence. We believe that it is
9 the universal rule that when a party to a law suit
10 knows of the existence of witnesses who are shown by
11 the evidence to have knowledge of and concerning a
12 matter in issue and such witnesses are available to
13 such party, the failure to call them gives rise to
14 the presumption that if such witnesses had been
15 called, their testimony would have been unfavorable
16 to the party thus failing to call them.

17 C. Despite Japan's sincerity and endeavors
18 rendered for amending and moderating her national
19 policy towards China, Japan did not receive any
20 answer from the Chinese authorities, especially
21 Chiang Kai-shek. Thus Japan's efforts so far made
22 for peace negotiation with China came to naught. For
23 this reason, Japan had to consider joining hands with
24 some important Chinese persons known to have an
25 urgent desire for peace and to work with them toward

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24 some important Chinese persons known to have an
25 urgent desire for peace and to work with them toward

1 an over-all peace. For this purpose, Prime Minister
2 KONOYE personally sent an instruction to BANZAI,
3 Rihachiro, (recommended by Foreign Minister UGAKI)
4 in July 1938 and had him to contact Tang Shao-yi and
5 Wu Pei-fu, popular men in China who were both eager
6 for making peace and ask for their cooperation. The
7 Army and the Navy sent their representatives, Major-
8 General DOHIHARA and Vice-Admiral TSUDA respectively
9 to China and had them cooperate in the move.¹ It
10 was in accordance with the government decision that
11 Major General DOHIHARA was sent to China. Yet this
12 effort proved to be a failure.
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1. Ex. 3316, Tr. 30307.

D. Mr. Wang Chao-ming, sympathizing with Japan's sincerity and endeavors for revising and moderating her national policy towards China, got out of Chungking of his own free will with an intention of devoting himself to making peace and saving the nation. ITAGAKI, feeling that the prospect of making peace was nearer with the government understanding, asked Mr. Wang to hasten the peace movement.² With respect to this matter, there was the testimony of the witness KAGESA³ and of the witness SHIMIZU,⁴ Kunzo establishing that. With his real understanding of Japan's true intention as previously mentioned and his sincere desire for making peace and saving the nation, Mr. Wang, as vice-President of the Kuomintang, separated himself from Chungking of his own accord and established Wang's Regime as a means for accomplishing his purpose. His final objects were, however, the unification of his and Chiang's regimes and complete peace settlement. The Japanese Government did not give any guidance, interfere, or exercise supervision in this matter; much less had it intention to illegally deprive China of her sovereignty and accomplish a conquest of her country.

2. Ex. 3316; tr. 30,314 (ITAGAKI's Affidavit)

3. Ex. 2721, the record of KAGESA's interrogatory, June 11, 1947, tr. 23,973

4. Ex. 2585, affidavit of witness SHIMIZU, May 15, 1947, tr. 22,260

On the contrary, Japan respected Wang's regime, concluded a fundamental treaty on an equal basis, limited the Japanese economical penetration in China to a considerable extent, and carried out relinquishment of her extra-territoriality rights and returning the Japanese Settlement. In the cross-examination of the witness KAGESA, the prosecution, offering a series of telegrams indicating that at the time when Mr. Wang moved from Hanoi to Shanghai and stayed there the Japanese agents rendered help in protecting and guarding him against assassination, attempted to prove that Japan treated him only as a puppet.¹ But that was not the fact. The truth was that the Japanese agents at Wang's request assisted him according to his desires. Additionally,² in the cross-examination of ITAGAKI the prosecution tried to establish that Mr. Wang's movement of "making peace and saving the nation" was originated by the "Save the Nation and Anti-Communism Association," which had been given funds by Japan. But this was denied by the witness and the prosecution did not prove that it was. The prosecution asserted that together with DOHIMARA and KAGESA, ITAGAKI did the same sort of thing in China under the name of "peace" as he had, in league with

1. Ex. 2721, the record of KAGESA's interrogatory, June 11, 1947, tr. 23,973

2. Cross-examination upon ITAGAKI, tr. 30,435

1 DOHIHARA, done in Manchuria under the name of "independ-
2 ence." They said that ITAGAKI exerted all possible
3 efforts to establish a puppet government in China,
4 while manoeuvring into its premiership Wang chin-wei,
5 one of the leading figures of the Chinese Government.
6 But it has been admitted by the prosecution itself that
7 Wang was then a personage of great importance in the
8 Chinese Government, and that, what is more, he was in
9 Chungking beyond the range of Japan's influence. Does
10 this fact now show that, with all efforts ITAGAKI
11 would not have been able to win Wang over without any
12 initiative on the latter's part? So genuine was his
13 love for China that Wang, after understanding the real
14 meaning of the two statements of 3 November and of
15 22 September, 1938, by the Japanese Government as amend-
16 ments to the partly erroneous KONOYE statement of 16
17 January of the same year, made up his mind to go over
18 to the enemy and devote himself wholly to making peace
19 and saving the nation. From this patriotism came all
20 his activities, which fact is shown by exhibit No. 2590,
21 composed of his various declarations.¹ In his declara-
22 tion of 9 December, 1938, at Honei, Wang urged the
23 necessity of finding a way to peace negotiations, call-
24 ing attention to the fact that the statement of the
25 1. Ex. 2590, excerpt from "Sharing the Fate," tr. 22,306

1 Japanese Government on 3 November had modified its
 2 attitude expressed by that of 10 January. Wang then
 3 sent to Chang Kai-shek the following wireless message:
 4 "Although Chao-ming (T.N. Wang Chin-wei) made a pro-
 5 posal on December 24, 1938, to the effect that a per-
 6 manent peace of Eastern Asia be established by adjust-
 7 ing Sino-Japanese relations based on the KONOYE State-
 8 ment of Japan, it was not adopted unfortunately. But
 9 Chao-ming strove to achieve the peace movement regard-
 10 less of many difficulties and sacrifices tying up with
 11 my comrades some of whom successively lost their
 12 lives discussing with the Japanese people both in and
 13 out of office to find a plan for peace. I have devoted
 14 one year to cleaning up the past complications in order
 15 to realize a hope for the future..."¹

16 From the "Declaration of the Return of the
 17 Capital,"² it is evident that Wang earnestly desired to
 18 lead to an over-all peace as soon as possible under a
 19 united leadership of Chiang and himself, and he felt
 20 forced to make his utmost effort to preserve the State
 21 and maintain the lives of the people. Though he early
 22 intended to initiate the peace movement, staying out
 23 of the Kuomintang Party and pointing out the wrong of
 24

25 1. Ex. 2600, excerpt from "Sharing the Fate," tr. 22,352
 2. Ex. 2605, "Declaration of Returning to the Capital,"
 tr. 22,367.

1 the anti-Japanese theory and persuading the National
2 Government to change its policy, yet he found it diffi-
3 cult to do so merely by talking. Thus, realizing that
4 it would be more effective to create a peace govern-
5 ment, endorsed by Japan's execution of her fair and
6 appropriate policies, bring about a successful result
7 of Sino-Japanese cooperation and thereby influence the
8 Chungking Government to turn to peace, Wang was de-
9 termined to establish such a peace government on his
10 own initiative and asked Japan for her full understand-
11 ing and support.¹

12 It was such feelings of patriotism and great
13 enthusiasm of intrepid Wang that moved Japan to feel
14 willing to extend cooperation to China with sincerity
15 and conciliatory spirit. So far as human rationality
16 is concerned, it is inconceivable that such a great man
17 as Wang was willing to get out of Chungking for the
18 purpose of making himself a puppet of Japan.

19 F. In connection with the establishment of
20 the China Affairs Board (December 18, 1938) and the
21 principle in its operation, the defense established
22 that following the outbreak of the China Incident
23 Japan had avoided setting up military government in
24

25 1. Ex. 2721-A, interrogatory of the witness KAGESA
by the Commissioner, tr. 23,984-8

1 China and fully lived up to the principle of leaving
2 China's home administration for maintaining peace and
3 order and for operating the civil government in the
4 hands of the Chinese themselves. Except, of course,
5 out of necessity of coordination with military opera-
6 tions, some matters had to be taken in charge by the
7 Japanese authorities, namely, by the Special Duty
8 Department, which resulted in adding to the burden of
9 the army. Then the army, with a view of unifying,
10 planning, execution and getting rid of that burden and
11 unifying policies, proposed to the Central Government
12 that the China Affairs Board be organized, which the
13 Cabinet decided to establish as a part of the national
14 policy. Consequently, the board made its debut on 18
15 December 1938 as a synthetic organ, with the Premier
16 as its president and the War, Naval, Foreign and Fin-
17 ance Ministers as its Vice-Presidents.¹ The Liaison
18 Office on the spot started its work in March of the
19 following year for the promotion of political, economi-
20 cal and cultural policies in concert with the Chinese
21 authorities, and the army's interference with it was
22 minimized.¹
23

24 As to this, the prosecution claims that about
25

1. Py. 455, tr. 5183
1. Px. 3316, tr. 30,305

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1. Py. 455, tr. 5183

1. Px. 3316, tr. 30,305

1 the latter part of August 1938, contrary to the Japan-
2 ese Foreign Office's proposition to set-up an organ
3 in the Foreign Office as a emergency measure pending
4 the progress of the China Incident, the army offered
5 its counter proposition to form an organ of perennial
6 nature which would direct China's politics and economics
7 and attain the goal of Japan's defensive and economical
8 desire. That Foreign Minister UGAKI opposed it and
9 because of it he resigned. That a little later the
10 China Affairs Board was brought into being and was
11 made the instrument of Japan's aggression in China.
12 But the prosecution produced no evidence so proving,
13 and ITAGAKI's categorical denial stands uncontradicted.^{2 3}

15 They sought, in the cross-examination of the
16 witness KIDO, regarding the reason for Foreign Minister
17 UGAKI's resignation¹ at the end of September, 1938, to
18 develop that one of the main reasons for his resigna-
19 tion was the alleged effort to strip the Foreign Office
20 of the control of China Affairs Board by appointing
21 the War Minister to the post of vice-chief of the Board.
22 In this the prosecution failed, KIDO instead saying
23 that he knew of no reason why UGAKI had tendered his
24 resignation to KONOYE. That at the time when KIDO was

25 2. Cross-ex. of ITAGAKI, tr. 30,449

3. ditto.

1. Cross-ex. of KIDO, tr. 31,538

1 consulted by KONOYE in this connection the problem was
2 in reality in a tangle, but after strenuous efforts
3 among the competent authorities of the War, Naval, and
4 Foreign Ministers, an agreement was finally worked out.
5 UGAKI's resignation took place just at this juncture.
6 That KONOYE told KIDO that he was quite at a loss to
7 understand the reason for UGAKI's resignation.

8 Whereby it was made clear that the establish-
9 ment and operation of the China Affairs Board was, as
10 may be seen in Article I of the Organization of the
11 China Affairs Board,¹ a temporary organ pending the
12 China Incident to handle the political, economical and
13 cultural (except diplomatic) affairs in China and to
14 set forth the policies in connection with the said
15 business. Especially, it was the comprehensive organ to
16 deal with the cultural affairs in China and unify the
17 administrative works concerning China of all depart-
18 ments and branches of the government.

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24 1. Ex. 455, tr. 5183
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1 The army thus freed from the burden hereto-
2 fore shouldered by it could concentrate on its proper
3 duty. The Board aimed at the synthetic enforcement
4 of Japan's China Policies on the basis of national
5 unification. Japan had no intent to accomplish an
6 economic monopoly and none was set up.

7 Japan had no intention of requiring China to
8 restrict the interests of the foreign nations of
9 good will who had the understanding of the ideal
10 of a New Far East and would join hands in this cause.
11 The Board had in view the realization of cooperation
12 between Japan and China. That is to say, promotion
13 of the economical welfare of both countries. ¹ UGAKI's
14 resignation had its motives somewhere else.

15 Quoting KAGESA's testimony, the prosecution
16 asserts that the China Affairs Board made out a
17 tentative plan which was accepted by Mr. Wang Ching-
18 wei on 30 December 1939. However, it is not clear
19 what it means and what connection it would show
20 ITAGAKI had with it. To avoid misunderstanding in
21 this regard, we quote KAGESA's testimony:

22 "The KONOYE statement of December 22, 1938
23 (Showa 13) is the only datum available to Mr. Wang
24 Ching-wei with regard to Japan's desire toward China.
25

1. Ex. 458-A, Tr. 5250

1 But it is too abstract, that various opinions, both
2 form and moderate would arise therefrom if one were
3 to put it in practice.

4 "It may be said that in order to show the
5 Japanese Government's sincerity toward Mr. Wang and
6 also to make the peace movement a success, the
7 Japanese Government should deliberate with Mr. Wang
8 as to the embodiment of the KONOYE statement prior
9 to Mr. Wang's organizing a government.

10 "However, in case the contentions of both
11 sides do not agree, Mr. Wang has the liberty to sus-
12 pend establishing his government.

13 "I (KAGESA) presented the above view to the
14 government and it was approved. In October, 1939
15 (Showa 14), a tentative plan was shown me by the
16 China Affairs Board.

17 "I, together with Rear Admiral SUGA, Foreign
18 Office Secretary YANO and INUKAI, Ken on our side
19 and Chou Fu-Hai, Mei Ssu-ping, Lin Pai-sheng and
20 Chou Lung-Hsinang on Wang's side, conducted exhaust-
21 ive investigations and discussions. Due amendments
22 were made to the said draft plan and a conclusion was
23 reached on December 30. To this amended plan both
24 the Japanese Government and Wang Ching-wei expressed
25

1
mutual agreement.¹

2 (F) Japan, in taking her military actions,
3 paid close attention to observe the laws of warfare,
4 the Nine Power Treaty, etc. She respected the
5 rights and interests of third powers in China and
6 tried, as soon as possible after the war, to make
7 reparation for damages unavoidably caused by her
8 military actions. Japan not only declared again and
9 again that she had no intention to boycott third
10 powers in China, that she would not frustrate the
11 principle of equal opportunity, but she endeavoured
12 to carry out the declaration with sincerity.²

13 The prosecution introduced "Documents on
14 the U.S.-Japanese Diplomatic Relations" (from 1931
15 to 1941) and quoted the letters exchanged between
16 the United States and Japan as to the Nine Powers
17 Treaty extending from October 6, 1938 to December
18 30.³

19
20 The Nine Power Treaty has already been dis-
21 cussed in detail.

22 But in the aforesaid letters exchanged be-
23 tween the U.S. and Japan especially in the latter

- 24 1. Ex. 2721-A, Interrogatory of KAGESA, Sadaoki
25 2. Ex. 3316, Tr. 30,310
3. Ex. 457, Tr. 5209
4. Ex. 28, Tr. 17,210

1 dated November 18, 1938, and returned by the Foreign
2 Minister ARITA to United States Ambassador to Japan,
3 Mr. Grew, Mr. ARITA made known to the United States
4 that "In view of the new situation which is now
5 developing in the East Asia, the attempt to apply
6 the old idea and principle prior to the Chinese
7 Incident to the new situation without any modifica-
8 tions will not make any contribution to the solution
9 of impending questions and will give no assurance of
10 enduring peace in the East Asia.¹

11 It was expected that the United States and
12 other countries would understand the real aim of
13 Japan, which was endeavoring strenuously to build
14 up a new order in East Asia in accordance with
15 international justice and would participate in the
16 great task of rebuilding East Asia in all branches
17 of commerce and industry.

18 The United States and other countries ap-
19 peared unwilling to understand the real aim of
20 Japan. Instead, they simply applied pressure to
21 Japan using as tools the general principles of the
22 Treaty, which was not applicable to the then state of
23 affairs. This was made an excuse for giving aid to
24 Chiang Kai-shek. In such a situation revising the
25

1 Nine Powers Treaty would be out of the question.

2 Furthermore, diplomatic matters were under the juris-
3 diction of the Foreign Minister and the War Minister
4 had no direct responsibility for it, nor had he par-
5 ticipated in it specifically.

6 (G) "The outline of five year plan on
7 manufacturing munitions" formulated by the War Depart-
8 ment on June 23, 1937¹ and "Outline of plan to expand
9 productivity" decided by the Cabinet meeting on
10 January 17, 1939² were introduced by the prosecution
11 witness Liebert.

12 Liebert's opinion was that the above-stated
13 two plans, together with "Outline of five-year plan
14 on essential industries,"³ were designed to complete
15 the plan of the wartime supply of principal muni-
16 tions. That aim of those plans was to promote in-
17 dustry and prescribe control in order to secure the
18 special products of final stage which would determine
19 the fate of military efforts in the part of Japan.⁴

20 Inasmuch as ITAGAKI became War Minister on
21 June 3, 1938, he had nothing to do with "Outline of
22 five-year plan on essential industries" dated May 29,
23 1937 or the "Outline of five-year plan on manufacturing
24

25 1. Ex. 841, Tr. 8261 3. Ex. 840, Tr. 8260
2. Ex. 842, Tr. 8269, 8264. 4. Ditto

munitions," dated June 23 of the same year.

Regarding "Outline of plan to expand productivity," ITAGAKI testified that at the occasion of his assumption of office he attempted, as one of the items of the established national policies, to bring the Chinese Incident to peaceful settlement as soon as possible by offering China modified conditions for peace. At the same time he set up a plan of supplying the operational materials which were being rapidly consumed and which were needed to make up for a deficiency in Japanese defense against Russia. In other words, he intended to set up peaceful economy in Japan and to secure a feeling of safety in her national defense against Russia. Above all, he wished the integrity of Manchukuo and also he wished to see the Five-Year Plan on Industries in Manchuria, formulated by the Government of Manchukuo, realized.

That the plan just mentioned was not intended for preparation for war is shown by the testimony of the witness OKADA,² who told this Tribunal that the Outline of the Five-Year Plan on Manufacturing Munitions (hereafter referred to as the "A" Plan) and

1. Ex. 3316 (as shown above), Tr. 30,311
2. Direct Exam. upon OKADA, Tr. 18,271-18,288.

1 Outline of Plan to Expand Productivity (hereinafter
2 referred to as the "B" Plan), which have been men-
3 tioned, were both for the purpose of strengthening
4 the national defense of Japan. "A" was exclusively
5 a military plan, while "B" was a plan to construct
6 the peaceful economy involving many military elements.
7 They were measures taken by Japan as precautions
8 against Russia whose national power had been making
9 rapid progress by her successive five-year plans.
10 Japan's heavy industry was only intended to make
11 Japan competent as one of the modern nations and, as
12 such, she hoped to promote the welfare of her people
13 as far as possible.

14 Japan, however, was obliged to give up "A"
15 before it was put in operation because of the out-
16 break of the China Incident. "B" was not brought
17 to completion¹ until the end of the fiscal year 1938.
18 It was reduced to a four-year plan. Furthermore,
19 actually, it was not carried out as it was expected
20 to be, but was curtailed and distorted a great deal.
21 "B" plan originally contemplated a small scale con-
22 trol. At first industrial mobilization was put
23 into force, then economic mobilization took effect
24 because of the China Incident which had spread
25 1. Cross-exam. of witness Liebert, Tr. 8583.

1 contrary to the wishes of Japan and as the situation
2 developed national mobilization became necessary.

3 "B" plan took its origin from the proposal
4 made by Colonel K. ISHIHARA (later, Major General),
5 the then Chief of the second section of the staff
6 (later Chief of the first department) about one and
7 a half years before the Cabinet decision. It's chief
8 aim was the peaceful construction of economy of
9 Japan and the assurance of safety in her national
10 defense against the threat of Russia, including the
11 integrity of Manchukuo. It was to start at the
12 same time as the Five-Year Plan on Industries in
13 Manchuria.

14 The cross-examination of the witness OKADA
15 indicated a prosecution desire to intimate that the
16 above-mentioned plans were formed in anticipation
17 of war in 1941, but the witness strongly denied it
18 and the prosecution has not shown the contrary.¹

19 In the second direct examination, the
20 witness made it clear that in forming the plan in
21 the year 1941 it was tentatively fixed as the first
22 year of war, as was customary on making operational
23 plans, and there was no particular meaning in this.
24
25 1. Cross-exam of witness OKADA, Tr. 18,330

Those plans involved a plan which would be
extended to 1943.¹

(H) When Liebert's interrogatories were presented to the Court, the prosecution introduced two notes containing the decisions of the Cabinet as evidence against ITAGAKI, as War Minister. One was the note of the decision of the Cabinet regarding "Thoroughgoing Enforcement of Policies for Urgent Matters Concerning National Mobilization" dated June 23, 1938, sent from the Chief Secretary of the Cabinet to War Minister ITAGAKI;² the other, the "Revision of Plan for Arranging Demand and Supply for Essential Materials for 1938" (the date, addresser and addressee are the same.)³

By these the prosecution hoped to establish that by the decision of the Cabinet to acquire essential materials the Japanese Government planned a war or wars of aggression, but it has not succeeded.⁴

We find it rather difficult to know what the prosecution claims to have established under some Counts relating to ITAGAKI. At the time Japan

1. Redirect-exam of OKADA, Tr. 18,336
2. Ex. 856, Tr. 8492
3. Ex. 857, Tr. 8498
4. Ex. 840, Tr. 8491

1 had hoped that the battle of Hsuehchow would bring the
2 China Incident to a close. But the predominance of
3 the enemy's strength, as well as the vastness of
4 the operational area, caused Japan to miss a fine
5 chance for making peace, China concentrated large
6 forces in front of Hankow, determined to make a
7 thorough-going resistance, vigorously pushing forward
8 extensive preparations for a counter-attack. If
9 left unchanged, it would have been a matter of course
10 that Japan's troops, less in number and scattered
11 over the vast area, would be exposed to grave danger,
12 and the Supreme Command of the Army was forced to
13 prepare for operations in the Hankow area as there
14 was no alternative but to make another counter-attack
15 upon the enemy and develop a new opportunity for
16 ¹ peace.

17 It was considered and believed that the more
18 fighting power Japan put in China, the weaker would
19 become her defense power against Russia in the North,
20 and the defects in her defenses were ² expected to
21 become worse and worse in the future.

22 Under such circumstances it was quite
23 natural and reasonable that in order to replenish war
24

- 25 1. Ex. 3316, Tr. 30,902
2. Ditto

materials which were consumed rapidly and to make up the ~~defects in her defense against Russia, the~~

1 total power of the nation should be brought into
2 full play. And it was nothing but an emergency and
3 makeshift measure for coping with the situation to
4 adopt a national policy of encouraging export trade --
5 securing foreign exchange -- and putting strict con-
6 trol upon demands from private enterprises. How can
7 it be said that Japan, who made every possible effort
8 to pull herself out of the quagmire -- the spread of
9 the China Incident, was disposed to be aggressive?

10 It is suggested in the beginning of exhibit
11 856 that the fall of Hsuehchow caused the war situa-
12 tion to develop further, but prospects of its end
13 being far remote, the whole nation should make up
14 its mind to endure the difficulties. The realization
15 of the national mobilization plan for 1938 became
16 difficult because of the seriously unfavorable balance
17 of foreign trade, and, if left unimproved, the re-
18 plenishment of war materials and the producing power
19 of the nation would be crippled, bringing serious
20 consequences in its wake. Exhibit 857 made it clear
21 that the demands for war materials increased as the
22 war developed so that the amount of war materials,
23 estimated at the beginning of the incident, was not
24
25

1 sufficient for replenishing the mobilized troops with
2 necessary equipment, and much larger demand was ex-
3 pected.

4 (I) As to the matter of closing the British
5 Concession at Tientsin -- about June or July in 1939 --
6 in connection with the settlement of the China Inci-
7 dent, Premier HIRANUMA consulted ITAGAKI about June
8 26 or 27, 1939, saying that as Britain was desirous
9 of having a diplomatic negotiation about the above
10 problem, he wanted to know the opinion of the army,
11 which he thought to be most important, prior to his
12 talk with the Foreign Office. ITAGAKI at once agreed
13 with him and made efforts to bring the negotiation
14 to a successful conclusion, inviting the representa-
15 tives of the authorities on the spot to the negotia-
16 tion so as to leave little difference of opinions be-
17 tween the Central authorities and those on the spot.
18 As the result the negotiation reached a successful
19 conclusion as to the problem of public peace; and as
20 to the question of general principle, too, Britain
21 and Japan made a joint declaration on July 24. Thus
22 it is shown that he made every possible effort to
23 settle the Incident.^{1,2}

- 24
25 1. Ex. 3301, Tr. 30,106
2. Ex. 269, Tr. 3586

The prosecution did not dispute this.

1 ITAGAKI testified that he hoped a forward step would
2 be made in the attempt of rearranging the Japanese-
3 American negotiations by contracting a loan from the
4 United States, with the Pan-Pacific Trading and
5 Navigation Company as leading contractor; in view of
6 the result of the above successful negotiation with
7 Britain, he expected to be able to pave the way for
8 the settlement of the Anglo-Japanese problem, and he
9 endeavored to contract the loan with Mr. HIRANUMA's
10 ardent support since January of that year, extending
11 active help to enterprises in general.¹
12

13 This, also, has not been disputed. Evidence
14 was given that the Navy's plan of holding Hainan Island,
15 presented to the Five Ministers Council on November 25,
16 1938², had been approved by the Council as a necessary
17 temporary measure for pure military purpose to make the
18 blockade effective against China so as to bring the
19 Incident to an end as soon as possible.²
20

21 This has not been disputed.

22 III. Regarding the Triple Negotiations

23 Between Japan, Germany and Italy.

24 The problem of negotiations for strengthening

25 1. Ex. 3316; T. 30,313

2. Ex. 612; T. 6731

3. Ex. 3316; T. 30,309

the anti-Comintern Pact between Japan, Germany and Italy started when Major General KASAHARA,¹ who had been stationed in Berlin at that time, after bringing Foreign Minister Ribbentrop's proposal to Tokyo, asked the intention of the Japanese military authorities. It was the beginning of August 1938, soon after ITAGAKI's inauguration as War Minister.² In July of the same year, showing a draft as to a mutual conference and an assistance pact between Japan, Germany and Italy, Foreign Minister Ribbentrop requested Military Attache OSHIMA³ to ask the intention of the Japanese Army on this idea. As soon as Major General KASAHARA reached Tokyo, he explained the German proposal to the heads of Army and Navy and to Foreign Minister UGAKI.³ Foreign Minister UGAKI then referred the matter to the Five Ministers Conference late in August of the same year, and decided to send a communication to Germany so as to promptly start the official diplomacy and, on the other hand, waited for the formal proposal from Germany^{4, 5} Though the contents of the German proposal at that time are not in evidence, the purport was that when either Japan, Germany or Italy was threatened by a third power,

1. Ex. 3493, KASAHARA's Affidavit, T. 33,717
2. Ex. 3508, OSHIMA's Affidavit, T. 33,988
3. Ex. 3493, KASAHARA's Affidavit, T. 33,718
4. Ex. 3316, ITAGAKI's Affidavit, T. 30,308
5. Ex. 3508, OSHIMA's Affidavit, T. 33,998

political aid should be given mutually, and when any of
the three powers was attacked, military aid¹ should be
given. In the before-mentioned Five Ministers Conference
it was decided that Japan might enter into the official
diplomatic negotiation provided that some phraseologies
would be altered along the line that would make the
Soviet Union the main objective and the other third
powers the secondary objective, in view of strengthening
the anti-Comintern Pact.^{2,3.} And all the amendments
had the nature of alleviation, as "mutual aid duty" was
altered to "will immediately enter into conference as to
mutual aid;2 and below "threat and attack" was added:
"which is made without provocation."⁴ This pact was to
be of a purely defensive nature, that is to say, it was
no more than an extension of the originally existing
anti-Comintern Pact. Its principal objective was the
Soviet Union and it was so made that it would not
create the impression that Britain, France, et al were
the objectives. At the same time, it restricted immed-
iate and unconditional military aid, making a provision
that a conference should be held before entering into an
aid and limiting the aid in the case of "other power's

1. Ex. 3493, KASAHARA's Affidavit (as shown before)

2. Ex. 3508, OSHIMA's Affidavit

3. Ex. 2735-A, Prince KONOYE's Note "regarding the
Triple Alliance," T. 24,290

4. Ex. 3514, Army Telegram 235; T. 34117

1 this was a splendid plan, with which one could kill
2 three birds with one stone, by making the contribution
3 to the settlement of the China Incident, defense against
4 the Soviet Union and to the strengthening of our
5 diplomatic position, and that the Minister would tele-
6 graph to the Ambassador as soon as the concrete counter-
7 measure of the government would be decided. Ambassador
8 OSHIMA received this.¹ However, there was a difficulty
9 in realizing agreement in opinion of the Cabinet members
10 and time passed on, so things ran counter to ITAGAKI's
11 expectation, who wished to make for the quick material-
12 ization of the peace between Japan and China by means
13 of the conclusion of Japan-Germany negotiations.²
14 Thus, the negotiations had not been in progress until
15 January 1939, when the HIRANUMA Cabinet dispatched ITO
16 as envoy to Germany.³

17 Quoting an article in the "Japan Advertiser,"
18 dated 2 October 1938⁴ the prosecution stated that War
19 Minister ITAGAKI sent a congratulatory telegram to
20 Hitler regarding the successful disposition as to the
21 Sudeten problem. However, with regard to such newspaper
22 article, we cannot be responsible. However, if there

- 23
24 1. Ex. 3508, OSHIMA's Affidavit
25 2. Ex. 3316, ITAGAKI's Affidavit
3. Ex. 3494, U-ANI, Utsuhiko's Affidavit, T.33,734
4. Ex. 2199, T. 15,745

1 had actually been such fact, it was no more than a
2 ceremonial greeting to the head of Germany which was,
3 at that time, one of the Japanese friendly nations.
4 It is quite obvious that such a thing cannot aid the
5 charges against ITAGAKI.

6 Moreover, with regard to the matter of the end
7 of cooperative relations between Japan and the various
8 organizations of the League of Nations¹ which, on
9 2 November 1938, was considered and decided at the
10 Privy Council, it was brought forward by Foreign Minister
11 and was decided through the investigations and the dis-
12 cussions of the members of Foreign Ministry.² Although
13 it withdrew from the League of Nations several years
14 before, Japan had been doing her best to cooperate with
15 various organizations of the League. However, being
16 influenced by the international situations, the League
17 had gradually become unfriendly to Japan, and finally
18 pitted against it, all along the line. In view of the
19 national prestige of Japan, it was obliged to discontinue
20 the cooperation. This was the reason why Japan discontin-
21 ued the cooperation with the League.^{3,4} With regard to
22
23

24 1. Ex. 271 & 2264; T. 30,863

25 2. Ex. 3340, KIDO's Affidavit

3. Ex. 3340, KIDO's Affidavit

4. Ex. 3316, ITAGAKI's Affidavit

1 to the matter of the conclusion of an agreement between
2 Japan and Germany for cultural cooperation, which was
3 referred to the Privy Council on 22 November 1938,¹ the
4 Japanese intention was to conclude the agreement of
5 this sort not only with Germany, but also with other
6 powers so far as circumstances thereafter would permit
7 and, by means of cultural diplomacy, to contribute to
8 the general object of the diplomacy, and it is obvious
9 that it would not bring any direct political influence.
10 The prosecution stated that it was, after all, a
11 political move to conclude a pact with Germany and there-
12 by leading it to the war. However, no one can find
13 anything to support the prosecution's statement by
14 inspecting page 6577 of the transcript. That is
15 stated on this page rather makes clear the fact that,
16 in reply to a committee's (Adviser ISHIZUKA) question
17 to the effect that although the agreement is not
18 directly connected with politics, if there is any doubt
19 to bring political influence, Foreign Minister ARITA
20 affirmed that he did not think it bore any influence
21 upon politics. The above mentioned two matters have
22 nothing to do with the Japanese Germany negotiations
23 regarding the strengthening of the anti-Comintern Pact
24 and are no more than a part of entirely separate
25

operations. They have nothing to do with any Count.

1 In January 1939 the counter-measure of the
2 Japanese Foreign Ministry about the Germany proposal
3 was presented for consideration by the HIRANUMA Cabinet
4 and was slightly altered. The Cabinet made this the
5 plan for reply, and it was decided that a mission headed
6 by ITO would be sent to Europe with this reply. As was
7 acknowledged also by the accused OSHIMA,¹ this plan
8 for reply was as shown in exhibit 2619.

10 The contents of the plan for reply were:

11 CONFERENCE AND AID AGREEMENT

12 BETWEEN JAPAN, ITALY AND GERMANY.

13 Acknowledging the fact that the friendly rela-
14 tions between Japan, Italy and Germany have become still
15 more intimate since the conclusion on 25 November 1936
16 of the pact against the Comintern-International, and
17 believing firmly the fact that the international
18 activities of the Comintern-International would menace
19 the peace of both Europe and Asia, the governments of
20 Japan, Italy and Germany determined to strengthen,
21 according to the spirit of the above-mentioned pact,
22 the defense against the communistic destruction in Europe
23 and Asia and to protect the common interests of the High
24 Contracting Parties and made an agreement as stated below:
25

1. Ex. 3508 OSHIMA's Affidavit; T. 34,002

1 Article One. If one of the High Contracting
2 Parties get into a difficulty owing to the attitude of
3 either a power or several powers that does not or do not
4 take part in this agreement, the High Contracting Parties
5 will immediately hold a conference about the common step
6 that should be taken.

7 Article Two. If one of the High Contracting
8 Parties were threatened without provocation by either
9 a power or several powers that does not or do not take
10 part in this agreement, the other countries of the High
11 Contracting Parties will be under obligation to give
12 political and economical support to the one that is
13 being threatened in order to get rid of the threat.

14 Article Three. If one of the High Contracting
15 Parties were made the object of attack without provoca-
16 tion, by either a power or several powers that does not
17 or do not take part in this agreement, the countries
18 of the High Contracting Parties will be under obligation
19 to give support and aid. The three High Contracting
20 Parties, in such case, will immediately hold conference
21 regarding the necessary steps for the fulfillment of the
22 responsibility.

23 Article Four. The text of this agreement is
24 written in Japanese, Italian and German.

25 This agreement will be carried out from the

1 very date of signing, and will be available for five
2 years.

3 The High Contracting Parties, in a proper time
4 before the termination of the above-mentioned period,
5 will seek an understanding about the form of future
6 cooperation. In order to testify the above-mentioned
7 fact, the plenipotentiaries who are invested with full
8 powers by each government have hereby signed and sealed.

9 THE PRESIDENT: We think this has been read
10 into the transcript. We do not want you to read
11 documents already in evidence. It is in evidence, of
12 course.

13 MR. MATTICE: Yes, sir. Resuming then at the
14 following page, that is, at page 160 ---

15 THE PRESIDENT: Well, as you have written it,
16 some of the Judges would like you to read it, so read
17 it. Some of the Judges prefer to read it, so read it.

18 MR. MATTICE: Yes, your Honor.
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eMR. MATTICE: SIGNATURE PROTOCOL

At the moment of proceeding to the signature of the Agreement concluded this day, each Plenipotentiary has agreed as follows:

(a) With reference to articles II and III of the Agreement; menace or attack against Manchukuo shall be regarded as menace or attack against Japan in the light of Paragraph 2 of the Protocol concluded between Japan and Manchukuo on September 15th, 1932.

(b) With reference to Paragraph 2 of Article IV of the Agreement, the Agreement shall remain in force until the situation necessitating support, assistance or aid ends, if support, assistance or aid based upon Article II to III is still continued at the expiration of the term.

SECRET ADDITIONAL PROTOCOL.

At the moment of proceeding to the signature of the Agreement concluded this day, the undersigned plenipotentiaries have agreed regarding the following.

(a) With reference to Articles II and III, authorized officials of the three High Contracting Parties shall deliberate, previously and as soon as possible after the Agreement is formed, as to the existence of every possibility of conflict and as to

1 the way and the scope, within which the High Contract-
2 ing Parties give their mutual support, assistance,
3 or aid according to the geographical conditions.

4 (b) High Contracting Parties shall be
5 obliged not to conclude an armistice or peace individu-
6 ally in a war they jointly wage.

7 (c) In the case some of the obligations
8 based upon treaties already concluded with third
9 powers are contrary to the provisions of this Agree-
10 ment, High Contracting Parties shall not be restrained
11 by these obligations.

12 (d) The present Secret Additional Protocol
13 shall not be published or transmitted to the third
14 powers without High Contracting Parties' approval.

15 (e) The present Secret Additional Protocol
16 shall remain in force for the same term as the
17 Agreement and the Signature Protocol and they shall
18 be three inseparable parts of a whole.

19 DOCUMENT NO. 4

20 Under instruction from the Japanese Govern-
21 ment, I request you to acknowledge that, at present
22 and in the near future, Japan will be able to ful-
23 fill her obligation of supplying assistance, and aid
24 which Japan consented in Article III of the Agreement,
25 only in the limited scope so far as the military

1 relation is concerned. Details of the military
2 assistance to be given in future according to the
3 circumstances shall be submitted to the deliberation
4 provided in the Secret Protocol.

5 That nature of the draft in this negotiations,
6 as its title shows, is consultation and assistance.
7 Its main object is to strengthen the united defense
8 against the destructive operation of the Comintern;
9 with Soviet Russia as its chief object but not any
10 other third power as its object. No intention of
11 world domination can be detected in any of its articles.
12 It is very pacific and harmless. It is an agreement
13 for neutral consultation and assistance, involving
14 no offensive intent. Repeated discussions in the
15 HIRANUMA Cabinet resulted from a difference of views
16 between Japan and Germany concerning the technical
17 problem as to whether a document or a verbal under-
18 standing be presented regarding Japan's reservation
19 that in case the third powers (such as Britain or
20 America) except Russia be regarded as the object,
21 for supplying military assistance would be in accord-
22 ance only with the circumstances, for instance when
23 the said country turned red, its enforcement and its
24 degree would be independently decided according to

25 (1) Lx. 2619 (Draft Agreement to Strengthen
the Anti Communistic Treaty); Tr. 22,546)

the situation, and it would be explained to the outside
 1 as an extension of the Anti-Communist Agreement. In
 2 other words, they resulted from the fact that while
 3 Japan desired a documental reservation, Germany
 4 demanded to make it general, eliminating the limita-
 5 tion regarding third powers except Russia with an aim
 6 of the general and political success, though she was
 7 fully aware that Japan could not supply military
 8 assistance under present circumstances. 1, 2, 3.

9 The HIRANUMA Message of May 5, 1939, frankly
 10 explaining Japan's standpoint, asked Germany to under-
 11 stand and to make concession.

12 ITAGAKI had Military Affairs Bureau Chief
 13 MACHIJIRI request German concession to Military
 14 Attache Ott. However, Germany, understanding Japan's
 15 allegation that if Germany be attacked by third powers
 16 except Russia Japan could not offer any military
 17 assistance for her for a while and may stand neutral,
 18 did not agree to making this secret understanding an
 19 exchange document. While the negotiations remained
 20 in a dead-lock, the Non-aggressive Treaty between
 21 Germany and Russia was concluded on August 22, conse-
 22 quently this negotiation ended. The later Tripartite

- 23
 24 (1. Ex. 3316, ITAGAKI's Affidavit (op. cit.)
 25 2. Ex. 3301, YAMAWAKI, Masataka's Affidavit;
 Tr. 30,103
 3. Ex. 3308, OSHIMA's Affidavit; Tr. 34,003)

1 Pact was concluded by the different responsible per-
2 sons under an entirely distinct new condition and had
3 no relation with this negotiation. This has already¹
4 been proved by Foreign Minister MATSUOKA's attitude,
5 his explanation at the Imperial Conference on September
6 27, 1940,² and KONOYE's Memoirs concerning the Tri-
partite Pact.³

7 ITAGAKI's intentions regarding the negoti-
8 ation between Japan, Germany and Italy were for the
9 purpose of rescuing the Japanese nation from death
10 from suffocation and ending chaos on the Chinese
11 continent, to make Japan's relation with friendly
12 powers closer with formal diplomatic negotiations
13 within the scope which was authorized by the diplomatic
14 right of an independent sovereign state in International
15 Law, to raise Japan's internationally isolated position,
16 to take the chance of its causing the Chinese Govern-
17 ment give up its pro-communistic and anti-Japanese
18 policy, to cause the powers supporting the Chiang
19 regime to turn anti-communistic, to adopt the co-
20 existence and co-prosperity doctrine; and, in the
21 end, to bring the Chinese Incident to an immediate
22 settlement. He firmly believed that considering
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- 25 (1. Tr. 35,049
2. Tr. 6341
3. Tr. 24,291)

Japan's situation at that time, his intention was a right and above-board action from the standpoint of International law. Particularly because the draft agreement was pacific and harmless, and because the negotiation was discontinued before conclusion as the result of Germany's betrayal. We find in these facts no evidence of an intention to commit crimes or of commission. The prosecution, availing itself of exhibit No. 2214, has adopted what it styles ITAGAKI's declaration. But it was proved that this was the record of ARITA's speech, not ITAGAKI's or KOISO's declaration. The prosecution, however, appears to forget that they so agreed.¹ By the KIDO Diary entry of August 4, 1939, the prosecution suggests that the army's opinion on the Military Agreement caused the threat of ITAGAKI's resignation from the War-Ministership.² But, as the Diary itself has made it clear, they were but rumors, and nothing but groundless hearsays.

(1. Defense Attorney Brook's correction at the opening of the KOISO Phase, October 31, 1947, Tr. 32,200.

2. Ex. 2271, KIDO Diary, 24 January 1947, Tr. 16,237)

1 It has been proved that the fact was that
2 ITAGAKI faithfully followed the government's adopted
3 policy, especially as he, sending the telegram about
4 May 1939, to the effect that he had no intention of
5 overthrowing the then cabinet, admonished military
6 attache to Germany, KAWABE. (2) The prosecution has pro-
7 duced the HARADA-SAIONJI Memoirs as the last resort
8 to accuse falsely that, against the Emperor's desire
9 to have only Russia as the object of the agreement
10 in this negotiation, ITAGAKI, supporting consistently
11 negotiations by OSHIMA and SHIRATORI, screened both
12 ambassadors' wayward conduct from the Emperor's censure,
13 and struggled bitterly with the power opposing the
14 agreement with Germany in the area inside Shanghaiwan.
15 However, the credibility of these memoirs is doubtful
16 and such second and third degree hearsay does not con-
17 tribute to a fair trial.

18 (3)
19 The Ott telegram dated September 6, 1939
20 shows that ITAGAKI worked hard to strengthen the rela-
21 tions between Japan and Germany, but it definitely
22 recognized that he failed to do so in consequence of
23 the change in European situation. Ambassadors OSHIMA
24 and SHIRATORI fulfilled respectively their duties by

25 (1) Ex. 3301, YAMAWAKI's Affidavit, T. 30,106

(2) Ex. 3495, KAWABE's Affidavit, T. 23,770

(3) Ex. 2198, the Ott telegram, T. 15,744

1 using their authority as ambassadors, qualified by
2 international law in conformity to Japan's national
3 law, and they never acted violating the national law
4 or against the ideal of international law.

5 In short, ITAGAKI's conduct in this negotia-
6 tion of 1938-1939 was the faithful fulfillment of his
7 official responsibility within the scope of the proper
8 exercise of national rights, with no malice or breach
9 of responsibility. The content of this negotiations,
10 as repeatedly mentioned, involves nothing to be crit-
11 icized from the international diplomatic viewpoint.
12 Moreover, this negotiation ended before any agreement
13 was concluded. Accordingly, Counts 5, 17, 23, 29 as
14 to ITAGAKI are not sustained.

15 IV. The Settlement of the Changkufeng and
16 Nomonhan Affairs.

17 The prosecution alleges in Counts 1, 4, 5, 17,
18 25, 26, 35, 36, 44, 51 and 52, together with Appendix
19 A, Section 8, Japan's aggression on the Soviet Union
20 and is prosecuting ITAGAKI with the charge of his
21 being concerned with all the counts mentioned above.
22 and in the phase of the Soviet Union beginning with
23 (1)
24 the opening statement and in its supplement, the prose-
25 cutor first asserts that the conclusion of the

(1) Prosecutor Golunski's opening statement in the
phase of the Soviet Union, Oct. 8, 1946, T. 7,213

1 Anti-Comintern Pact constituted, from a political
2 point of view, the crime of aggression and, secondly,
3 alleges the Changkufeng (Lake Khassan) Affair in 1938,
4 the Nomonhan (the Khalkin-Gol River) Affair in 1939,
5 and plots intended for military aggression against the
6 Soviet Union (the special maneuvers of the Kwantung
7 Army, etc.) in other years, as constituting aggression
8 from military viewpoint.

9 With the Anti-Comintern Pact concluded on
10 November 25, 1936, ITAGAKI had no connection whatever.
11 As at that time he was in Manchuria as Chief of Staff
12 of the Kwantung Army he occupied no responsible posi-
13 tion concerning the decision of our national plan
14 nor had authority of any sort with regard to the con-
15 clusion of the pact.

16 And also in operating the plan of the special
17 maneuvers the Kwantung Army made he was not a partici-
18 pant. When the reinforcement of the Japanese military
19 forces in Manchuria, lasting until October from July
20 1941, was put into practice, he was in Korea (Seoul)
21 as Commander of the Japanese Army in Korea. (2) The
22 above-mentioned maneuvers were intended for reinforcing
23 the Kwantung Army in order to meet the need of strength-
24 ening warlike preparations against the Soviet Union,
25

(1) Ex. 110, ITAGAKI's career, T. 716

(2) Ex. 110, ITAGAKI's career, T. 716

1 and orders from the Japanese General Headquarters
2 being dispatched to the Commander of the Kwantung Army,
3 the Commander of the Japanese Army in Korea had no
4 connection therewith and was not invested with any
5 degree of authority to interfere therein. (1)

6 Let us take up the Changkufeng and the Nomon-
7 han Affairs.

8 THE PRESIDENT: We will recess for fifteen
9 minutes.

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceed-
12 ings were resumed as follows:)

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25 (1. Ex. 3576, TANAKA, Shinichi's Affidavit,
May 29, 1947; Tr. 23,329)

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1 THE PRESIDENT: We have decided not to sit on
2 Army Day, by a majority.

3 Mr. Mattice.

4 MR. MATTICE: Reading now page 169:

5 (A) The Changkufeng Incident.

6 The circumstances in which Japan was placed at
7 the outbreak of the Changkufeng affair in July, 1938,
8 was as follows: In consequence that she failed in
9 seizing the opportunity of settling the affair peace-
10 fully due to the reason that the battle of Hsuehow by
11 the victory of which the Japanese Supreme Command had
12 expected to find the key to the solution of the China
13 Incident fell short of attaining her object of operations
14 and ended in missing a prize ready at hand owing to a
15 vast gulf between her strength and that of China and the
16 spaciousness of the battlefield, Japan was driven to such
17 a plight as to be compelled to remove her forces for the
18 preparations made necessary to venture the Hankow mili-
19 tary operation in order that she might find out the way
20 of making peace with riddance of an aggravated menace
21 to which the armed forces of Japan were exposed because
22 of the dispersed disposition of her small strength
23 against the overwhelming odds China concentrated upon
24 the front of Hankow and of a vociferous cry China dared
25 to raise for thoroughgoing resistance to Japan. It was,

therefore, everything for Japan to maintain her relations
 1 with the Soviet Union in quietude and tranquility. It
 2 would be beyond reason that Japan under such conditions
 3 dare to open hostilities with the Soviet Union, and it
 4 must be the least possible thing, too. Japan was
 5 astonished at the outbreak of this affair. (1)(2)

Really this affair had its origin in a strife
 7 about the position of the frontier caused by the
 8 ambiguity of the treaty on the frontier line which was
 9 not clear and about which some sort of strife was going
 10 on. (3)(4)(5) It was occasioned by the fact that on July
 11 11, 1938, some forty Soviet soldiers trespassed upon the
 12 territory of Manchukuo in the vicinity of Chanchi (a
 13 place which belongs to the territory of Manchukuo and
 14 even the Soviet Union so admits) and occupying Changkuferg
 15 started the construction of positions. (6)(7)(8) The

16 military police sent out by Japan and Manchuria were
 17 shot at, one of them being killed while the rest were
 18 captured. (9)(10) (July 15)

20 ((1) Ex. 3316, ITAGAKI's affidavit, 8 October 1947, T.
 21 30304. (2) Ex. 2622, HASHIMOTO, Gun, affidavit, 20 May
 22 1947, T. 22586. (3) Ex. 756, the record of the confer-
 23 ence between SHIGEMITSU and Litvinov, T. 7760.
 24 (4) Ex. 2626, the Peking Supplementary Treaty, 16 Nov.
 25 1860, T. 22696. (5) Ex. 2627, the protocol on the
 eastern frontier of Hunchun, T. 22698. (6) Ex. 2622,
 HASHIMOTO, Gun, affidavit, T. 22586. (7) Ex. 2628,
 TANAKA, Ryukichi, affidavit, T. 2271. (8) Ex. 2633,
 excerpts from Litvinov's diary, T. 22803. (9) Ex. 753
 (read) T. 22819. (10) Ex. 2642, MIURA, Waichi, affidavit,
 T. 22899.)

1 Foreign Minister UGAKI, on July 14, prior to
2 dispatching telegraphic instructions to Deputy Amba-
3 sador NISHI at the Soviet Union requiring the Soviet
4 forces to make its rapid withdrawal tried to settle the
5 affair by recouring to diplomatic negotiations. (1)

6 Deputy Ambassador NISHI visited Deputy Minister
7 of the Foreign Affairs of the Soviet Union Stomoniyakov
8 at noon on the following day, the 15th, and delivered
9 the demand to him. (2)(3)

10 Ambassador SHIGEMITSU protested also on July
11 20 over one week before the serious encounter of July
12 29th. (4)

13 But at the actual place Soviet forces had re-
14 inforced since July 20, and in the neighborhood of
15 Manchuli, Suifen-ho and Hulin, they repeated transgres-
16 sion upon the territory of Manchukuo by land and by air,
17 and so the Japanese Government dispatched telegraphic
18 instructions to her Ambassador at the Soviet Union. (5)

19 The Japanese Supreme Command regarded it as
20 a petty strife of which the frontier between the Soviet
21 Union and Manchukuo had hitherto frequently been the
22 scene, when it received the first news from the actual
23 place, but because, on the one hand, the Japanese Army

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25 ((1) Ex. 2647-A, the returns of the Foreign Office, T. 22923. (2) May 23, 1947, T. 22923. (3) Ex. 753, excerpt from Litvinov's diary, T. 7760. (4) Ex. 754 already referred to. (5) Ex. 2647-A already referred to.)

1 in Korea was not experienced in this sort of affair and
2 on the other hand the Supreme Command was most unwilling
3 to its expansion which might be made by any chance just
4 at the time when preparations for the Wuchang-Hankow
5 operations were being attended to, it decided to lead
6 the Japanese Army in Korea to take a cautious attitude
7 and also fixed the principle of settling the affair by
8 transferring it to formal diplomatic negotiations and to
9 the Army in Korea dispatched a telegram to that effect.
10 At the same time the Supreme Command took the course of
11 offering through the War Ministry to the Foreign Office
12 that negotiations therewith should be opened. In
13 addition, the authorities instructed General NAKAMURA,
14 Kotaro, in that principle prior to start for his new
15 post as Commander of the Japanese Army in Korea, while,
16 once again, Major-General HASHIMOTO, Gun, the Chief in
17 the First Department of the General Staff has a talk
18 with the General about the foregoing when the former
19 saw the latter off at Haneda Airdrome on the morning of
20 (1)
his departure.

21 ITAGAKI, as the War Minister, wholeheartedly
22 observing the Government's principle of not expanding
23 the affair and looking for a settlement which should be
24 reached by means of diplomatic negotiations, strove for
25

((1) Ex. 2622, HASHIMOTO's affidavit, T. 22587; Ex. 3340,
KIDO's affidavit, T. 30854.)

1 settling rapidly and locally in complete agreement with
2 the General Staff. (1)

3 Foreign Minister UGAKI affirmed that ITAGAKI
4 was faithful in observing the Government's principle of
5 localizing the affair and aided the Government in
6 settling the affair rapidly and peacefully. (2)

7 When, on July 21, ITAGAKI reported to his
8 Majesty on matters under his jurisdiction concerning
9 this affair, His Majesty asking him if his report was
10 not somewhat different from that which Foreign Minister
11 UGAKI submitted to the Throne, was pleased to postpone
12 his decision until ITAGAKI could investigate. The
13 prosecution intimated that ITAGAKI was severely
14 reprimanded by His Majesty, when he reported that UGAKI
15 approved of employing force of arms against the Soviet
16 Union and introduced to support it "the recollections of
17 HARADA and SAIONJI." Not only is this hearsay, but
18 Foreign Minister UGAKI attested that he had not heard of
19 such a thing. (3)

20 ITAGAKI himself knows this matter quite well.
21 There was a discrepancy between the report which was

- 22 ((1) Ex. 3316, ITAGAKI's affidavit, already referred to.
23 (2) Ex. 2715, UGAKI, Kazushige, affidavit, T. 23870.
24 (3) Cross-examination upon UGAKI, January 10, 1947,
25 T. 23889.)

1 submitted to the Emperor by UGAKI, the Foreign Minister,
2 and that of ITAGAKI, in respect to preparations of the
3 Army to meet the situation, wherein, if, by any chance,
4 the Soviet forces might cross the boundary, taking an
5 aggressive attitude in connection with the Changkufeng
6 Incident. As the results of the investigation made by
7 Premier KONOYE, it became explicit that there had been
8 some misunderstanding on the part of Foreign Minister
9 UGAKI. Consequently, after Premier KONOYE presented an
10 explanation to the Throne, ITAGAKI was again granted an
11 audience by the Emperor and received the Imperial
12 sanction.⁽¹⁾

13 The Japanese High Command, in view of the slow
14 progress of the diplomatic negotiations, fearing the
15 unexpected enlargement of the conflict might ensue, both
16 sides facing each other on the spot, decided to recall
17 the troops which the Chosen Army dispatched for rein-
18 forcement of the boundary guard and to watch quietly
19 the development of the situation. Accordingly, such an
20 order was issued on July 26.⁽²⁾

21 No sooner had the Japanese troops begun to
22 withdraw⁽³⁾ than the Soviet troops penetrated into the
23 territory of Manchuria at 9:30 a.m., July 29, crossing
24

25 ((1) Direct Examination of ITAGAKI, Oct. 10, 1947,
T. 30521. (2) Ex. 2622, HASHIMOTO, Gun, affidavit,
T. 22588. (3) Ex. 2628, TANAKA, Ryukichi, affidavit
T. 22716.)

1 over the boundary line north of Changkufeng and south
2 of Shatsaofeng, which the Soviet Union alleged to have
3 been fixed by agreement, and set about to build fortifi-
4 cations. Whereupon, the Japanese forces drove back
5 these Soviet troops from there and then withdrew as far
6 as the western hill in order to avoid any further
7 clashes. The Soviet troops, having seen the weak
8 attitude of the Japanese forces, attacked them under
9 cover of tanks. Such being the state of things, the
10 Japanese forces engaged in battle reluctantly for self-
11 defense. (1)

12 After that, Soviet troops, until the conclusion
13 of the agreement, the highest peak of activities being
14 August 2, using long range cannon, even using airplanes,
15 bombed far into the interior regions of Korea. But,
16 the Japanese troops took such method as to repel the
17 enemy wherever they made assault, never transgressed the
18 boundary line and sticking to the defense line. In the
19 face of the daily increase of damages, especially after
20 the request for permission to use airplanes by the
21 Chosen Army had been turned down by the Central Author-
22 ities, the Japanese Army, fighting an unfavorable
23 battle, waited patiently the outcome of the diplomatic
24 negotiations. (2)(3)

25 ((1) Ex. 2647-A as shown above, T. 22932. (2) Ex. 2647-A
as shown above. (3) Ex. 2622 as shown above.)

During this period formal diplomatic negotiations between SHIGEMITSU and Litvinov were carried on several times and finally the agreement of truce was signed August 11.⁽¹⁾ Thus the affair came to a settlement.

Such is the truth of the Changkufeng Incident as testified by all positive evidence. Though the prosecution witness Lieutenant Colonel Tereskin's testimony⁽²⁾ can scarcely be said to be substantially important and relevant to this incident, for he only took command of the battle of July 30 and 31 and soon retired from the front line on account of an injury, though he admitted that the Soviet troops had built fortifications at Changkufeng on July 11.⁽³⁾

The witness Chernopyatko's testimony was the same.⁽⁴⁾ Vartarmin's testimony was likewise the same.⁽⁵⁾

Exhibit 753 is a report made by the Border Defense Bureau of the Soviet People's Home Commissariate on March 21, 1946. We call to the Court's attention that this report was not made at the time of the incident but worked out quite recently in consideration of

((1) Ex. 2647-A as shown above.

(2) Direct Examination of Tereskin, October 5, 1946, T. 7782.

(3) Cross-examination of Tereskin, October 15, 1946, T. 7802.

(4) Ex. 755, October 15, 1946, T. 7809.

(5) Ex. 756, October 15, 1946, T. 7815.)

1 this trial. It is clear that this Changkufeng Incident
2 was not instigated by Japan with aggressive intentions,
3 but the fact was just the reverse. Japan endeavored to
4 settle the incident by means of diplomatic negotiations,
5 at the same time tried earnestly to prevent its enlarge-
6 ment, localizing it on the spot at the expense of great
7 damages and sacrifice. ITAGAKI faithfully followed the
8 aforesaid policy of the Japanese Government and tried
9 his best to settle it. It is, therefore, emphasized
10 that this case shall not be taken up in the Indictment,
11 therefore, the alleged Counts of 17, 25, 35, 44, and 52
12 are groundless.

(B) The Nomonhan Incident.

1 Like the Chankufeng Incident, this incident
2 was one arising from an inaccuracy of the boundary line
3 between countries. Japan, at that time being absorbed
4 in solving the China Incident, she wanted nothing but
5 peace with the Soviet Union. Consequently, Japan,
6 maintaining a passive attitude against the Soviet
7 Union all the time and sustaining great damage and
8 disadvantage, fought the defensive battle against the
9 challenge of the Soviet Union, as an independent state,
10 as well as on the ground of common defense of Japan
11 and Manchukuo. Besides, this incident was settled
12 September 13, 1939, by the regular diplomatic
13 negotiations and handed over to the Common Committee
14 of both countries, which finally fixed the boundary
15 line after two years study. Thus, the whole matter
16 came to a close. ITAGAKI, the then War Minister,
17 consulting with the Supreme Command and obtaining
18 the consent of the Cabinet, endeavored to settle
19 the incident as quickly as possible maintaining
20 the Kwantung Army's policy of localization on defense
21 line.
22 (1)
23

24 It seems that the prosecution assumed that
25 the Kwantung Army had already in mind this military

(1) Ex. 3316, ITAGAKI's affidavit, October 8, 1947;
T. 30,315.

1 operation three years before the happening of this
2 incident, and that the objective of such operation
3 had been to cut the main line of the Siberian Railway
4 so that the Far East might be kept out of the Soviet
5 Union, referring to Ex. 761-A, in which ITAGAKI was
6 quoted as having told ARITA to that effect on March
7 28, 1936. That is really an incomprehensible assertion.
8 As the map will clearly show, the region where this
9 incident occurred is a remote prairie pasture along
10 the Harhigol River. It may be of some worth to the
11 natives, but it is beyond our comprehension how the
12 securing of this region had any bearing on the cutting
13 of the main line of the Siberian Railway.

14 Referring to the interrogation of the
15 accused HIRANUMA, dated April 24, 1946, the prosecution
16 assumed that ITAGAKI had again stated his views that
17 the combat should have been continued against Premier
18 HIRANUMA's intentions.⁽¹⁾ Nevertheless, the President
19 of this Tribunal ruled, sustained by a majority of
20 the Members, that the interrogation of one of the
21 accused may be used favorably or unfavorably in
22 respect to that accused only. But, that as to others,
23 it may not be considered.⁽²⁾ Furthermore, when

25 (1) Ex. 768-A, Interrogation of HIRANUMA, T. 7853-6.
(2) June 17, 1948; T. 24, 572.

Mr. Tavenner made a proposal on August 13, 1947,
1 that the foregoing rule be changed, the President
2 again ruled that an accused statement, made after the
3 war's end, in an interrogation, may only be admitted
4 against him who made it. (3) In pointing out the fore-
5 going fact we conclude that the statement of the
6 prosecution is supported by no proper evidence. In
7 addition, the prosecution produced exhibit 274 and
8 assumed that the Japanese and Mongolian Armies had
9 been strengthened and expanded at the same time.
10 This exhibit made clear the basic principles of
11 establishing the Mongolian Army and shows the
12 fundamental principles of training and administering
13 the Mongolian Army, thus making it alert and able
14 to fulfill its duty or defense of its country.

16 We cannot see that there exists any relation
17 between this exhibit and the matter dealt with.
18 Besides, ITAGAKI had no connection with it.

19 In the first place the Nomohan Incident
20 was only one instance of those frontier disputes
21 which were apt to happen concerning obscure boundaries
22 everywhere in the world. The fact that the greater
23 part of the evidences offered to this Court regarding
24

25 (3) T. 25,662

(1) (2) (3)

this matter, were maps of the region

1 clearly show the nature of the disputes. Moreover,
2 the responsibilities of the incident were evidently
3 on the side of the Outer Mongolia for it was the Outer
4 Mongolian Army which crossed the River Halhar on
5 May 12, 1939, which was believed to be the Manchurian
6 and Mongolian boundary and attacked the Manchurian
7 Army. The Kwantung Army as a matter of duty dispatched
8 twice a small branch force to expel the invading
9 army but as soon as its task had been accomplished,
10 the detached force returned every time to their
11 original station, taking every precaution to prevent
12 further enlargement. At first the matter was left
13 entirely to the hand of the Kwantung Army, but on
14 May 31, in the General Staff Office, was decided
15 the policy to localize it, keeping an eye on the
16 development of the incident.
17

18 From June 15 on, however, considerable
19 numbers of the Outer Mongolian Army, equipped with
20 guns and tanks, invaded, and Russian airplanes came to
21 bomb. Thus their attacks gradually became intense.
22 As it was a definite policy of the Supreme Command
23 not to make air operation in the conflict the Kwantung
24

25 (1) Ex. 2650, YANO's affidavit, May 26, 1947; T. 22,994.

(2) Ex. 2655, TAKUSHIRO, Hattori's affidavit, May 26,
1947; T. 23,014.

(3) Ex. 2656, OGISU's affidavit, May 26, 1947; T. 23,029.

1 Army had to suffer serious damages, and was forced,
 2 finally, to reciprocate. On August 30, the Vice-
 3 Chief of the General Staff, NAKAJIMA, brought the
 4 order to the Kwantung Army not to enlarge the operation
 5 in the area of Nomonhan, but to bring it to a close
 6 as speedily as possible. And, on the 3rd of September,
 7 the Vice-Chief of the General Staff, was again dispatched
 8 to Hsinking to hand over the order to the Commander
 9 of the Kwantung Army. The contents of the order was
 10 that "the Imperial Headquarters is intending settle-
 11 ment of the incident and offensive operations should
 12 cease." For the purpose of implementing the order,
 13 UEDA, the Commander of the Kwantung Army was relieved
 14 of his post. He found himself in a very difficult
 15 position, to have to stop the operational movements
 16 of the garrison which had already been on the move
 17 and a new commander was appointed who was expected
 18 to carry out the order. (1)

19 On the other hand the diplomatic negotiation
 20 was carried out in Moscow between TOGO and Molotov
 21 and on September 16, an agreement of truce was signed
 22 and the hostilities ended. (1) (2)

- 23 (1) Ex. 2622, HASHIMOTO, Gun's affidavit, May 22,
 24 1947; T. 22,595.
 25 (1) Ex. 2659, OTA, Saburo's affidavit, May 27, 1947;
 T. 23,098.
 (2) Ex. 2661-A, Nomonhan Agreement of Truce; T. 23,142.

As stated, just like the Changkufeng Incident, it was not the Japanese that opened fire with the intention of aggression, but it was that the Outer Mongolian Army (and the Russian Army joined later), crossed the boundary and initiated the offensive attack. Japan, under the heavy burden of settling the China Incident, sincerely wished the peace of the northern area, was bent on quick solution of the matter, localizing it, avoiding its further development. Thus, she intended the voluntary settlement, even at the expense of great sacrifices. It is endorsed by the fact that the damages sustained by the Kwantung Army were far greater than those sustained by their opponents. We wish to call the attention of the Court to the fact that as the result of the formal diplomatic negotiation between the two countries, the agreement was reached and settlement of the boundary was realized by the work of the joint committee extending through two years. And, thus this matter was fait accompli. This matter should have been omitted from the Indictment and, accordingly, the Counts against ITAGAKI, numbers 17, 26, 36, 51, and 52, have not been sustained.

At this point, if the Tribunal please, Mr. SASAGAWA will read.

THE PRESIDENT: Mr. SASAGAWA.

MR. SASAGAWA: CHAPTER III

ITAGAKI as Chief of Staff in China.

ITAGAKI was in an easy position after the collapse of the HIRANUMA Cabinet. But as soon as the General Headquarters of the dispatched Army to China had been organized, he went to Nanking, being ordered to become the Chief of Staff, under the Commander in Chief, NISHIO, and he held this post until July 7, 1941. During this period he tried in every way to bring about promptly the all-rounded peace between Japan and China, which, though it was his ardent desire, he had not been able to realize during his tenure of office as War Minister. He now devoted his energy to it, according to the changing circumstances on the spot. (1) During the period of his said office, the military movements were limited to supplementary operations for the purpose of enforcing the blockade of the replenishing route to Chungking, and he was chiefly engaged in maintaining the occupied area. Public security and peace were his chief concerns. The cooperation with the Wang Regime was wholly left in the hands of the Ambassador ABE. It was an earnest desire of the Army that the Nanking Government would

(1) Ex. 3316, ITAGAKI's affidavit, October 8, 1947;
T. 30,317.

1 finally join the Chungking Regime, though the Army
2 supported the Wang Peace and Salvation movement. This
3 is made evident by the fact that in 1940, supporting
4 most earnestly the peace negotiation with Chiang
5 Kai-shek through the mediation of Sung Tzu-liang,
6 the younger brother of Sung Tzu-chieh, ITAGAKI tried
7 to have an interview with Chiang Kai-shek in Changsha. (2) (3)

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24 (2) Ex. 3316, ITAGAKI's affidavit, (as shown above).
25 (3) Ex. 3305, OKADA, Yoshimasa's affidavit, October
6, 1947; T. 30,151.

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Also it was proved by the fact that he used
 1. endeavored to obtain the mediation of the Presiden
 2. of the United States, with the help of Dr. Stuard,
 3. President of Peiping University.

We wish to call attention to the fact that
 it was proved that a troop of the South China expe-
 6. ditionary forces, sent to North Indo-China under an
 7. order of the Imperial Headquarters, dated July 5,
 8. 1940, had been under direct command of the Imperial
 9. Headquarters, completely severed from the China
 10. Expeditionary forces to which ITAGAKI belonged and
 11. consequently he had nothing to do with that troop
 12. movement into North Indo-China.
 13. 2. 3.

The prosecution merely said that when the
 14. China Expeditionary Forces headquarters was organized,
 15. ITAGAKI was appointed its Chief of Staff and he kept
 16. on carrying out his former plan even after his appoint-
 17. ment. But they did not cite concretely any offenses
 18. committed by him.

The period between July 1941 and September
1945, when ITAGAKI was Commander in Chief of the
Korean Army and of the 7th Area Army.

1. Ex. 3316, ITAGAKI's affidavit, T. 30319.
2. Ex. 3316, (as shown above).
3. Ex. 3306-A, SAWADA's affidavit, T. 30157.

1 1. In the argument concerning the accused
2 ITAGAKI, the prosecution asserted in paragraph 55,
3 that count 1 was substantiated by paragraphs 1-54,
4 which meant the whole of its summation. We do not
5 see any necessity of attempting to answer such a
6 vague and omnibus assertion. They also said that
7 counts 29 to 34 were substantiated by paragraphs
8 53 and 54. These two paragraphs discuss matters
9 concerning ITAGAKI after his appointment as the
10 Commander in Chief of the Korean Army in 1941.

11 In reference to count 1 the prosecution
12 said:

13 "In that position he seemed to be less
14 active, but judging from his opinions, ideas and
15 schemings in the past, he was certainly not free
16 from the responsibility for the outbreak of the
17 Pacific War, which in every respect was an outcome
18 of the overall conspiracy in which ITAGAKI had played
19 a most active part."
20

21 But where are his opinions, ideas, and
22 schemings, which prove his participation in any con-
23 spiracy which brought about the outbreak of the
24 Pacific War? His participation in such over-all
25 conspiracy has not been shown. On the contrary, we
have established many instances of his efforts to

bring about peace in the Orient.

1 2. Next the prosecution asserted that
2 counts 29 to 34 (waging war against the United States,
3 the Philippines, the British Commonwealth, the
4 Netherlands, France and Thailand) were substantiated
5 by the said two paragraphs. However, there is
6 nothing stated in those paragraphs which shows the
7 guilt of ITAGAKI as a wager of war of aggression
8 against those countries. Do they mean to say that,
9 simply because the Pacific War broke out while he
10 was Commander in Chief of the Korean Army? ITAGAKI
11 testified that the Korean Army was on a peace-time
12 footing until February 1945.^{1.} Apart from this
13 fact of his being the Commander of the Korean Army,
14 there is no evidence sustaining these charges. We,
15 therefore, say that ITAGAKI is not guilty of the
16 charges in counts 29 to 34.
17

18 3. Next, the prosecution says that counts
19 45 to 47 were substantiated by paragraphs 53 and 54.
20 Counts 45 to 47 related to an attack on Nanking
21 (12 December 1937), on Canton (21 October 1938), and
22 on Hankow (27 October 1938), respectively, and have
23 nothing to do with the period covered by paragraphs
24 53 and 54 of their summation.
25

1. T. 30321.

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22 on Hankow (27 October 1938), respectively, and have
23 nothing to do with the period covered by paragraphs
24 53 and 54 of their summation.
25

1. T. 30321.

4. They do not charge ITAGAKI under count 54 and count 55 for the period of the Pacific War, but refer to evidence concerning conventional war crimes and crimes against peace in their general and individual summation for this period. The prosecution says that by the general summation they do not propose to link the individual accused with the commission of or other responsibility but we feel it is necessary to deal in detail with all evidence referred to by the prosecution, and by both their and the defense evidence we shall make it clear that ITAGAKI has not committed, in law or in fact, any of the crimes charged in counts 54 and 55.

5. The defendant General ITAGAKI was the Commander in Chief of the Korean Army for the period of 1942 and April 1945. The prosecution said, in the paragraph J-14 of their general summation on POW, that some POW's were punished by the POW Camp Commander for informing untruthfully to the representative of the International Red Cross in 1943. They expressed their regret to the Red Cross representative in 1944 for not thanking the Camp Commander in the previous year. That they did this because they feared reprisal if they did not express their gratitude. Are we to believe that officers of Great Britain would

1 stoop so low as to express gratitude on behalf of
2 several hundred compatriots to a third person, if not
3 true, fearing that they might be punished by a few
4 days' confinement if they did not?

5 There is no evidence to show what would
6 have happened to them if they did not express their
7 gratitude to the Red Cross representative. We can
8 therefore assume with stronger conviction that these
9 men felt really thankful for the treatment of the
10 commander that their gratitude did come out of their
11 hearts.

12 1.
13 The witness IHARA and the reports of the
14 representative of the Red Cross stated clearly the
15 actual conditions of the various camps in Korea and,
16 beyond doubt, they were better than any other camps.
17 Five months have elapsed since this evidence was
18 introduced and the prosecution has produced only one
19 exhibit^{3.} in rebuttal, which was an affidavit of a
20 soldier who claimed to know all important events
21 which happened in the POW camps in Korea. The gist of
22 the affidavit was that he heard that the list of
23 complaints compiled by the prisoners was not received

24 1. Ex. 3307, T. 30163.

25 2. Ex. 3308, 3309, 3310.

3. Ex. 3844, T. 38167.

by the representative.

1 Not a word was uttered to show what they
2 suffered from and what their complaints were about.
3 We submit that their complaints must have been very
4 unreasonable ones.
5

6 6. In paragraph J-21 the prosecution
7 referred to evidence showing that the POW and civilian
8 internees suffered a great deal owing to the lack
9 of food and medicine in Singapore, Java, Sumatra,
10 Borneo and other places under the jurisdiction of
11 the 7th Area Army.

12 ITAGAKI was Commander in Chief of the 7th
13 Area Army from 21st of April 1945 to the end of war.

14 We shall argue fully later on the fact that
15 the 7th Area Army had only limited direct power over
16 prisoners of war in the Singapore Area. But here we
17 say that ITAGAKI had control of POW's only in the
18 Singapore area so we refrain from dealing with exhibits
19 regarding Java, Sumatra and Borneo.
20

21 These areas, however, were suffering terribly
22 from the difficulty of communication and of obtaining
23 foodstuffs and medicines for the use of the soldiers
24 and natives owing to the continued attack by the Allied
25 Forces from sea and air on the Japanese communication
lines. It is quite understandable that those in

1 authority preserved the stock of these necessities
2 as much as possible since they did not know how long
3 this state of siege would continue.

4 With regard to the exhibits referred to by
5 the prosecution concerning the Singapore area the
6 most of them concern periods prior to May 1945. If
7 we limit them to the period later than April 1945 we
8 find there are nothing but complaints of shortage of
9 supply of food and medical care. There was no evidence
10 of maltreatment or atrocities. The prosecution
11 accused the defendant about the fact that such food
12 and medicine were kept in stock together with what
13 the Japanese Army obtained from the British Army.
14 But self-preservation is the law of nature. The
15 Japanese Army did not know how long the war would
16 last and they could not know when the state of siege
17 would be lifted. They could neither tell how soon
18 food and other necessities would reach them even if
19 the tide of war changed. Under such circumstances
20 it was natural and necessary for those who were
21 responsible to sustain the lives of hundreds of
22 thousands including the prisoners of war, to conserve
23 the supply by minimizing the consumption to the utmost,
24 which of course lowered the living conditions.
25

This was based on the law of nature which is

superior even to the international conventions.
It was clear from the testimony of the witnesses
HAZEYAMA, AYABE, and SAITO^{1.} that the rations of
food and other things to the POWs were similar to
the Japanese soldiers.

In fact it is in evidence that ITAGAKI did
increase the ration of food to the prisoners of war
to the same level as the Japanese soldiers, even
under the most strained conditions.

7. In paragraphs J-122 VII and J-122-A-11,
the prosecution charged the defendant with a breach
of the Hague and Geneva Conventions by referring to
the report made in the name of ITAGAKI to TOJO regard-
ing the regulations of the POW Camps in Korea^{2.} and
quoted the passage that the prisoners would be used
for industrial development and military labor. But
they failed to show any evidence of the Korean Army
actually using the POWs for labor directly connected
with operation.

The prosecution also referred to the portion
where the report says that NCO and above should be
guided to work voluntarily, and assumed that it

1. Ex. 3311, 3312, 3313; T. 30198, 30210, 30221, and
30231.
2. Ex. 1976.

1 meant to make matters so bad that they would eventually
2 work voluntarily. This is such a twisting assumption
3 that it is not worth arguing on our part. They also
4 referred the passage about labor for air field. But
5 there seems to be no evidence of actual use of the
6 POWs in the air field. No evidence was produced to
7 prove such fact.

8 The prosecution have collected a vast amount
9 of evidence about actual atrocities committed by the
10 Japanese Army from all over the areas which were under
11 their control. But with regards to Korea they only
12 produced documents which were made in the name of
13 ITAGAKI by his staff officers, and picked up sentences
14 here and there which appeared to be in breach of
15 conventions. These sentences may appear to be in
16 breach, but where are the facts of breach? No evidence
17 of any facts of breach of conventions were proved in
18 this court.

19 8. In the paragraph J-123-ii, the prosecu-
20 tion referred to the telegram sent from the Chief of
21 Staff of the Korean Army to the Vice-Minister of War,^{1.}
22 the report sent to the War Minister TOJO in the name
23 of ITAGAKI,^{2.} and the report on the reaction of the

24 1. Ex. 1973.
25 2. Ditto.

1 general public to the internment of British prisoners
2 of war in Korea issued in the name of the Chief of
3 Staff IHARA to the Vice-Minister of War KIMURA as
4 evidence of breach of conventions which prohibit
5 putting prisoners of war to insult or to the curiosity
6 of the public. The prosecution was again relying on
7 documents issued by the Japanese Army containing
8 some language which if carried out may have produced
9 insult or put the POW's to public curiosity, but
10 ITAGAKI neither caused it nor had any knowledge of
11 it.

12 But the defense would like to know where
13 are the facts of such insult or public ridicule in
14 evidence? The prosecution asserted, without any
15 proof, that the POW's were paraded in Fusan, Seoul,
16 and Jinsen. The POW had to be transported to these
17 places and it was unavoidable to be seen by the
18 public and to rouse the public curiosity. But there
19 is no evidence of insult upon POW's or proof of public
20 ridicule. The witness IHARA, who was the responsible
21 person for sending that report, testified^{1.} that
22 report had no connection whatever with the report of
23 his predecessor or with that which was sent in the
24 1. Ex. 3307.
25

1 name of ITAGAKI,^{1.} and that it was a compilation of
2 regular reports from gendarmeries, military affairs
3 sections of various places, station headquarters
4 and commissariats and others. It was one of the
5 customary reports presented to the War Ministry for
6 its information, and that it was of secondary impor-
7 tance,^{2.} and it did not require the commandant's
8 perusal or that he had to look into that later on.^{3.}

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24 1. T. 30169.
25 2. T. 30162.
3. T. 30173.

The witness IHARA also testified that depending
1 on the personal character of the staff officer and on
2 the contents of the decisions there were cases when the
3 Chief of Staff arrived at decision independently and
4 documents were issued under the name of the commander
5 without his knowledge and without being reported to him
6 later on.¹

The defendant ITAGAKI testified in his affi-
8 davit² that regarding the telegrams and reports con-
9 tained in the exhibit No. 1973 he heard later from the
10 then Chief of Staff, Major General TAKAHASHI, that the
11 sending of the Allied prisoners to Korea emanated from
12 the Chief of the POW Information Bureau and that ITAGAKI
13 himself had never seen these documents before.³ We
14 submit therefore that all these documents which the
15 prosecution referred to were composed and sent out by
16 the Chief of Staff of the Korean Army and ITAGAKI did
17 not know anything about them.

19 9. In the paragraph J-124-iii the matter of
20 parole was mentioned but there was no evidence of com-
21 pulsion in Korea.

22 10. Further in paragraphs J-21 and 154 the
23 prosecution refers to exhibit 1514-A.⁴ This is an
24

25 1. Tr. 30,165.
2. Ex. 3316.

3. Tr. 30,321.
4. Tr. 12,927.

1 affidavit of an internee at Outram Road prison in
2 Singapore, and for the period after April 1945 it spoke
3 of the poor condition of food supply and about unlawful
4 execution of some Allied airmen who were taken out of
5 the prison. In this connection the defense witness
6 UESUGI explained in detail, and said that the unlawful
7 execution was done by some officers of the 3d Air Corps,
8 and that the Commander of the 7th Army, ITAGAKI, had
9 no power over the Air Corps.¹ Thus ITAGAKI had no
10 responsibility and in fact no evidence was produced to
11 show that he had any knowledge of or acquiesced in
12 this.

13 11. Next the prosecution argued in paragraph
14 HH-53 of the individual summation against ITAGAKI, that
15 although he became inactive after being appointed as
16 the Commander-in-Chief of the Korean Army he must be
17 presumably responsible for the Pacific War from what
18 his opinions and ideas were previously, and went on
19 to say that it was sinister that ITAGAKI¹ should ask
20 for 1,000 British POWs to Korea. This was mere ground-
21 less suspicion. We have already argued ITAGAKI's
22 innocence on this matter.

23 The prosecution referred to exhibit No. 1973-4
24 and 1976 as evidence of atrocities committed in Korea.

25 1. Ex. 3314; Tr. 30,240.

1 They were policies suggested by some staff officer or
2 officers as already explained. They were not proofs
3 of any atrocities actually committed. The facts were
4 just the contrary. The witness IHARA testified in
5 his affidavit that ITAGAKI took great care to see the
6 POWs would receive comfort and fair treatment.¹ This
7 fact was very strongly supported by the reports of the
8 representatives of the International Red Cross who
9 visited the various camps in Korea while ITAGAKI was
10 the commander.² The Red Cross representatives had
11 visited the camps every year and had interviews with
12 the POWs. Their impression was always good.

13 The civilian internees and POWs were given
14 suitable quarters at the most healthy spots in Korea
15 and were segregated from the curious public eyes.
16 They were supplied with as much clothing as the
17 Japanese Army could supply. The heating and bathing
18 devices were complete in every quarter. They were
19 allowed to have exercise and amusements besides vege-
20 table gardens and domestic animals. The authorities
21 were planning to install radio sets too. Especially
22 in the matter of food the racial customs were taken
23 into consideration. Bread and meat were supplied in
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25 1. Tr. 30,163.

2. Ex. 3308, 3309, 3310; Tr. 30,174.

1 addition to the staple food. The food was given to
2 them in raw material so that POWs might be able to
3 cook them according to their own likings.¹ The fact
4 that these things were carried out in the POW camps there
5 showed that ITAGAK¹ cared for justice and humanity.

6 We submit that the treatment of POWs and
7 civilian internees in Korea was exemplary.

8 12. In paragraph HH-54 the prosecution
9 challenged the defense evidence by "overwhelming weight
10 of contrary evidence." But when one looks into those
11 proofs which the prosecution referred to, one finds at
12 once that the majority of them are matters which
13 occurred prior to May 1945, and only one event hap-
14 pened in Singapore while ITAGAKI was stationed there
15 as Commander-in-Chief of the 7th Area Army from the
16 end of April 1945 to the time of surrender. We think
17 it is unnecessary to deal with them one by one but we
18 shall do so for the convenience of the Tribunal.

19 13. Before dealing with the prosecution's
20 proof, in order to argue the responsibility of ITAGAKI
21 with regard to the atrocities committed by the Japanese
22 soldiers in Sumatra, Andaman, Nicobar, Java, and Borneo,
23 which were under the jurisdiction of the 7th Area
24 Army, we feel it necessary to clarify the relations
25

1. Ex. 3307; Tr. 30,160, 30,164.

1 between the Southern Army Command, the 7th Area Army
2 and the commanders of local armies in regard to the POW
3 camps and military administration in these areas.

4 The prosecution's own witness Colonel Wild
5 testified in this court that the commander of the POW
6 camps in southern areas controlled the prisoners under
7 the instructions of Tokyo and liaised with the local
8 army command regarding labor and in the matters of
9 defense. With regard to the treatment of POWs and
10 supply of labor the chief of POW camps had absolute
11 power. He mentioned that instructions came from Tokyo.
12 But he was speaking of the time when General FUKUE
13 was the chief of the POW camps in Malaya. Later the
14 instructions came from the Commander-in-Chief of the
15 Southern Army which fact was proved by other witnesses.

16 In another prosecution exhibit 1681-A, the
17 affidavit of Colonel NAKATA, who was the chief of
18 POW camps in Java up to the end of the war, the colonel
19 stated the Commander-in-Chief of the Southern Army,
20 Count TERAUCHI, was his direct superior. He received
21 his instructions direct through the headquarters of
22 the commander of the army in Java. He further added
23 that the prisoners of war and other internees were
24 directly under his control.
25

1. Tr. 5389, 5391.

2. Ex. 1681-A; Tr. 13,486.

1 The defense witness FUWA testified in cross-
2 examination that the commander of an army mentioned in
3 the Article 3 of the Ordinance of Prisoner of War
4 Camps of December 23, 1941, should be interpreted to
5 be the Commander of the Southern Army in case overseas
6 POW camps were considered.¹

7 The defendant TOJO testified along the same
8 line in reply to the questions put by the Tribunal.
9 He further testified that the Commander-in-Chief of
10 the Southern Army was vested with the responsibility
11 for the military administration of the occupied areas
12 and local commanders -- not the area commander -- were²
13 given the authority for the military administration.³
14 The defense witnesses HAZEYAMA and SAITO, who was⁴
15 the chief of the POW camps in Malaya, also testified
16 in the same way.

17 In other words, the responsibility for the
18 treatment of the prisoners of war and civil internees
19 was with the chiefs of POW camps in various areas.
20 The military administration was vested in the local
21 army commanders, both being under the over-all super-
22 vision of the Commander-in-Chief of the Southern Army.
23

- 24 1. Tr. 28,733.
25 2. Tr. 36,804-5.
3. Ex. 3311; Tr. 30,197.
4. Ex. 3313; Tr. 30,230.

1 Thus it is clear that 7th Area Army Commander ITAGAKI,
2 who directly controlled the Singapore area, had no
3 responsibility for the treatment of POWs, civilian
4 internees or for the military administration in other
5 areas.

6 14. We now take up the evidence referred to
7 by the prosecution based upon the above distinction.

8 Exhibit No. 1614 dealt with atrocities committed
9 in Andaman islands. These islands were under the
10 operational jurisdiction of the 29th Army, but the local
11 administration was vested with the naval detachment
12 stationed there, as was testified by the witness
13 UYESUGI.¹

14 Exhibits 1617-1622 referred to matters which
15 occurred in Nicobar islands. The control of these
16 islands was same as Andaman islands. Besides the com-
17 munication between these islands and Singapore area
18 was entirely cut off since 1945, as was proved by the
19 witness UYESUGI.²

20 Exhibits 1655 and 1658 referred to the atro-
21 cities committed in Borneo area. The army in control
22 of this area was the 37th Army. The reported atrocities
23 were all committed prior to May 1945.
24

- 25 1. Ex. 3314; Tr. 30,241-2.
2. Tr. 30,243.

Exhibits 1668-75 referred to killing and death by starvation of prisoners of war in the march from Sandakan to Renau in Borneo. The witness TAKAYAMA, who was a staff officer of the 37th Army, testified in this court that the march was ordered by the commandant of the 37th Army following the order from the Commander-in-Chief of the Southern Army. The 7th Area Army had no connection with the order at all. Furthermore, TAKAYAMA testified that the sea and air communication had been completely severed, and the wireless communication with Singapore was limited to very short space of time every day.

Exhibit 1686 also dealt with matters which happened in Borneo. The time of occurrence was prior to April 1945.

Exhibits 1691, 1712, 1720-22, 1758-9 dealt with atrocities and shortage of supply of food and medical stuff to the POWs and civil internees in Java. The area was controlled by the 16th Army and the Commander-in-Chief was General HARADA.

Exhibits 1769, 1778, Tr. 13,471, 13,573, and 13,756, dealt with atrocities and shortage of supply of foodstuff in Sumatra area. In this area there was

1. Ex. 3315; Tr. 30,247.
2. Tr. 30,250.

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the 25th Army in control.

1 THE PRESIDENT: We will adjourn until half-
2 past one.

3 (Whereupon, at 1200, a recess was
4 taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. SASAGAWA.

MR. SASAGAWA: 15. Transcript 5418-9 was the testimony of Colonel Wild where he said that POWs were employed on constructing defense works. But the Colonel did not work himself. He must have heard it from others as to on what kind of work the prisoners were employed. The witness HAZEYAMA and AYABE testified that the POWs were employed in constructing air raid shelters but they were not put to work on anything directly connected with operation.^{1.}

The witness SAITO who had the greatest concern with the treatment of prisoners of war as the Chief of POW Camps, also testified that they were not employed in such works^{2.} and that he had never been questioned in the matter of treatment of prisoners, either military or civilians.

In this connection we should like to point out that Colonel Wild testified that the Chief of

1. Tr. 30198, 30208, 30221-2.
2. Tr. 30231.

1 POW Camps, General SAITO, had a very strong power
2 over the treatment of POWs, that the British officers
3 were consulted before any decision of supply of
4 labor, and that "no one could be taken out of the
5 camp without the POW Administration's permission."¹.

6 After thus perusing the evidence which the
7 prosecution referred to, it becomes clear that no
8 conventional or war crimes were committed in the
9 area which was under the direct control of defendant
10 ITAGAKI.

11 Colonel Wild was an expert on war crimes
12 committed in the South Seas and was able to pin the
13 responsibility of these breaches on any defendant who
14 deserved it. He knew ITAGAKI was the 7th Area Army
15 Commander and testified that he had the pleasure of
16 attending the ceremony when the formal surrender was
17 made by ITAGAKI on behalf of Count TERAUCHI.² He
18 testified in this Tribunal in the presence of the
19 defendant, but he did not utter a single word against
20 ITAGAKI in the matter of treatment of POWs. We venture
21 to submit that if he had any dissatisfaction with
22 ITAGAKI in the matter of treatment of POWs he would
23 have blamed him here.
24

25 1. Tr. 5391.
2. Tr. 5491 $\frac{1}{2}$.

1 We presume that not only he had no dis-
2 satisfaction but knew how fair and just ITAGAKI
3 conducted towards the POWs and civilians in general.

4 16. With regard to the attitude of ITAGAKI
5 towards the POWs and the civilians as has been already
6 stated, the witness HAZEYAMA testified that he
7 ordered an increase in the amount of staple food to
8 the POWs to the same level as the Japanese soldiers.
9 The witness AYABE in his affidavit stated that
10 ITAGAKI was a man of justice and champion of humanity.
11 When a Japanese ship, "Awa-maru," was sunk by the
12 Allied navy and over two thousand civilians were
13 killed, public opinion was enraged and clamored for
14 stopping the distribution of comfort goods for POWs
15 brought by S.S. Awa-maru. ITAGAKI, however, calmly
16 admonished the public by saying that the true spirit
17 of Bushido was to do justice and uphold humanity even
18 under such circumstances by distributing the relief
19 goods to the POWs, and ordered the distribution
20 without delay.^{1.}

21
22 AYABE explained in detail about the attitude
23 of ITAGAKI regarding food ration to the POWs and
24 stated that when ITAGAKI inspected the POW camps he
25 1. Tr. 30218.

1 specially studied the ration provisions of the
2 internees and ordered the increase of the ration as
3 much as possible.^{1.} In answer to the question,
4 what was ITAGAKI's attitude towards native civilians,
5 AYABE told about ITAGAKI's food policy, dispersement
6 of population policy for the bombed area and treat-
7 ment of native laborers and made it plain that
8 ITAGAKI acted in the spirit of justice and humanity
9 towards civilians too.^{2.}

10 The witness SAITO mentioned in his affidavit
11 an episode of a young officer who intended to commit
12 atrocity to the POWs at the news of defeat. When
13 ITAGAKI heard about it he called the young officer
14 into his private room and convinced him of his mis-
15 take and thus prevented occurrence of violence.^{3.}

16 This may seem a small matter but it is an
17 example to show that ITAGAKI had a firm concept of
18 justice and humanity and acted accordingly whenever
19 occasion arose.

20 We submit that if ITAGAKI had not been there,
21 in the excitement and confusion at the news of de-
22 feat, any unfortunate incident might have happened

- 23
24 1. Tr. 30220-3.
25 2. Tr. 30224-7.
3. Tr. 30232.

1 in the Singapore area.

2 The witness UESUGI testified in cross-
3 examination that as the result of investigation into
4 the war crimes in the Singapore area which he con-
5 ducted in the capacity of a liaison and investiga-
6 tion officer under the direct order of Colonel Wild,
7 he discovered only one instance of an unlawful
8 execution during the period of ITAGAKI's commander-
9 ship.

10 This was committed by some officers of air
11 corps over which ITAGAKI had no jurisdiction.^{1.}

12 We have thus studied the evidence produced
13 by both prosecution and defense, which related to
14 ITAGAKI in connection with the Counts 54 and 55.
15 We have made it clear that ITAGAKI has not committed
16 any crimes under these Counts. We firmly believe
17 ITAGAKI did as much as possible for the POWs,
18 civilian internees and native populace in the inter-
19 est of justice and humanity, more than the inter-
20 national law required of him, and that he is not
21 guilty of any of these crimes.

22 Mr. Mattice will continue.

23 THE PRESIDENT: Mr. Mattice.

24 1. Tr. 30245.
25

1 MR. MATTICE: The prosecution has arranged
2 its argument concerning ITAGAKI in eight sections.
3 We will follow that arrangement.

4 When a nation or person is in a place where
5 it or he has a right to be and is assailed under such
6 circumstances as that it or he honestly believes
7 existence to be in danger, it or he has a right to
8 defend, even to the extent of taking the life of the
9 assailant.

10 The prosecution's argument relating to this
11 accused follows, generally, a pattern of a summary
12 of its evidence. As far as we can we will answer the
13 same and will point out certain mistakes as a result
14 of which there has been a twisting of what the evidence
15 actually shows.

16 At the point in its argument designated HH-1
17 they begin with a misstatement. They say ITAGAKI
18 identified himself as the recognized leader and cite
19 exhibit 245, Tr. 3016. In this exhibit the witness
20 MORISHIMA said: "During this period, Colonel ITAGAKI,
21 Seishiro, Lieutenant Colonel ISHIHARA, Kanji, and
22 Major HANYA, are among those in the Kwantung Army who
23 became definitely identified with the leadership of
24 this group." That was not ITAGAKI, but MORISHIMA
25 identifying, and he was not saying that ITAGAKI was

1 the leader, but as one of a group of officers who
2 were among the leaders.

3 They say TANAKA repeatedly referred to such
4 alleged fact. TANAKA never once referred to ITAGAKI
5 as the leader, but always spoke of leaders. The same
6 was true of HASHIMOTO and CHO.

7 They say the aspiration of the young officers
8 was to occupy Manchuria, to separate it from China,
9 to keep it for Japan, and to exploit it economically.
10 Their basis for such argument is the testimony of
11 TANAKA^{1.} and MORISHIMA.^{2.}

12 This is a good place to pay our respects to
13 those witnesses. TANAKA, the professional witness,
14 known in the Japanese Army as "The Monster," and
15 MORISHIMA, the diplomat, who had a solution for
16 everything but solved nothing. The peculiar workings
17 of the TANAKA mind are past understanding but cer-
18 tainly not reliable. He may well be said to be a
19 man of the character of one concerning whom it was
20 said, "Beware of he who protesteth too loudly." His
21 mouthings certainly cannot and ought not to be given
22 much weight. As against an accused person's denial,
23 TANAKA's statements do not measure up to such a point
24

25 1. Tr. 1976.
2. Tr. 3016.

that they could be said to equal, let alone outweigh.
1 His deep interest in this case and his evident willing-
2 ness to testify to anything and for anybody, stamps
3 a legend of unreliability all over his testimony.
4 MORISHIMA, the diplomat, belonged to that well-
5 known foreign service coterie of every country, who
6 talk and write and are going to settle, by negotiation,
7 but never do. They virtually claim to be possessed
8 of a peculiar skill for doing such things and that
9 nobody else has the brains or the know-how to do so.
10 They commonly object to any other department of
11 government having anything to do with pending matters
12 and then, when they have failed and a grave crisis
13 is precipitated they throw up their hands and say it
14 is a matter for the military to deal with. Therefore,
15 they do not wish the military to prepare, lest, they
16 always say, it impede their diplomatic efforts. Then,
17 when the blow falls, the military is expected to deal
18 with the situation, ready or not. MORISHIMA was not
19 satisfied with the Kwantung Army attitude. That the
20 Kwantung Army, vastly outnumbered and threatened
21 and being "pushed off the sidewalk" every day, was in
22 danger of annihilation, meant nothing to him. Accord-
23 ing to him, the Army must not make any plans or pre-
24 pare to meet an attack by an overwhelming force,
25

1 but must sit quietly by while they, the super
2 diplomats, continue their efforts to settle some 300
3 incidents which had already occurred and none of
4 which had been settled. They did not settle them and
5 could not, for the Chinese, who had caused them with
6 a view of setting the stage for attacking and driving
7 the Japanese out of Manchuria, did not wish them
8 settled and would not settle. Remember, the Japanese
9 then in Manchuria, had a right to be there under
10 treaty and contract arrangements. It should also be
11 remembered that when a nation, like an individual, is
12 in a place where it has a right to be and is attacked,
13 or its nationals and property endangered, under such
14 circumstances as that it honestly believes that its
15 existence or the lives and property of its nationals
16 rightfully in the place are in danger, it has the
17 same right as an individual in those circumstances
18 to defend itself and its nationals.

19 At HH-2, the prosecution asserts that
20
21 ITAGAKI became intimately acquainted with a group
22 around Dr. OKAWA, with the objective of absorbing
23 Manchuria in order to make Japan self sufficient. To
24 sustain this assertion they point to the testimony of
25 OKAWA. Aside from the poor quality of this man as a
witness, reference to the transcript will show that

what he was offering was pure hearsay. At page 15587
1 in the record, when asked who drafted the plan, he
2 said: "I don't know exactly, but the person who
3 gave me orders was Kingoro HASHIMOTO," and when asked
4 who was at the top drafting the plan, he said: I
5 have an idea." He was then asked the leading ques-
6 tion: "Are SHIGETO, HASHIMOTO, ITAGAKI and DOHIHARA
7 involved?" and he answered: "Yes."

9 That ITAGAKI and ISHIHARA were the central
10 figures in the Kwantung Army and HASHIMOTO, Major
11 CHO and himself were the same in Japan (HH-3) is
12 what OKAWA is said to have said to the witness
13 TANAKA.

14 MORISHIMA again (HH-4, Tr. 3016) indulges
15 in an opinion and conclusion that "they seemed to
16 want to occupy it and to establish a government
17 there. . . subservient to Japan."

18 At the same point (HH-4) they have TANAKA
19 saying that ITAGAKI personally voiced such an opinion
20 to TANAKA. TANAKA did not say that. What he said
21 was:¹ that in those days no elements of the Army
22 advocated the independence of Manchuria, "but when
23 the situation had reached such a state that diplomatic
24 negotiations were of no avail, it was the stand of
25 1. Tr. 1959.

1 members of the Army that armed force should be re-
2 sorted to in driving the Chinese forces from Manchuria
3 and to set up a new regime under Japanese control, a
4 regime of peace and order." It was TANAKA who said
5 this, not ITAGAKI.¹

6 At HH-4 they say that ISHIHARA in cross-
7 examination admitted that ITAGAKI did entertain the
8 idea that an armed conflict would be inevitable. True,
9 ITAGAKI did entertain the belief that an armed con-
10 flict was inevitable, but not for the reason stated
11 by TANAKA. ITAGAKI felt so for another and different
12 reason, which was that, observing the steady and in-
13 creasing anti-Japanese attitude of the Chinese Army
14 in that region, the constant implementation of its
15 forces there and their ill-treatment of the Japanese
16 people who were lawfully there, it meant nothing less
17 than that the Chinese purposed attacking and driving
18 the Japanese out of Manchuria. Nothing could have
19 been more evident than that such was the case. Being
20 in a place where they had a right to be the Japanese
21 were not required to submit to being oppressed and
22 driven out. ITAGAKI, knowing that Japan would not
23 withdraw, naturally felt that an armed conflict was
24 inevitable.
25

1. Tr. 1959.

1 The prosecution asserts that such conflict
2 was not inevitable because the consuls and Chinese
3 authorities were trying to reach a settlement. They
4 were trying, t'was said, but in view of the fact that
5 some 300 incidents remained unsettled and more were
6 occurring almost daily, it was quite patent that
7 their efforts were futile -- futile because the
8 Chinese did not wish them settled. Their purpose was
9 to make it tough and continue to make it tough for
10 the Japanese, so tough that they would leave Manchuria
11 and abandon their investments and interests there on
12 which they had spent many years of labor and millions
13 of yen.

14 When a man or nation is in a place where he
15 or it has a right to be and is assailed under such
16 circumstances that he or it honestly believes existent
17 to be in danger, he or it may defend.
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At HE-6 comment is made regarding the operational plan, which, ISHIFARA said, ITAGAKI knew about. Of course the Kwantung Army had operational plans, as every army of every nation has. These plans were, as stated by General ITAGAKI, defensive. Would any able army staff personnel in a situation such as existed at the times and places stated, believing, in fact knowing, that the Chinese preparations meant nothing less than an attack on the Japanese, fail to make plans to meet such an onslaught? They would be derelict in their duty if they did not. The possession of the large guns at Mukden was but part of an endeavor to be as ready as possible when the attack came and that the gun was used need occasion no surprise. No doubt the Kwantung Army, as is generally the case with all armies, wished they had had more guns, so as not to be in a situation of having "too little."

There was no contradiction in ITAGAKI's saying that the main force would be afforded an opportunity to deliver a heavy blow to the nucleus of the Chinese Army. Outnumbered as they were some 200,000 to 10,000 troops, with the Chinese possessing superior equipment, including tanks, artillery and airplanes, if such a small force was to avoid annihilation it must, if it could, strike a quick hard blow at the head of the giant

which threatened to overwhelm it.

1 At HH-7 it is asserted that the incident was
2 pre-arranged, and this idea is based upon what it is
3 alleged OKAWA, when drunk, told SHIMIZU. We submit
4 that such hearsay statement said to have been made by
5 a drunken man is not sufficient to meet, much less
6 overcome, (the prosecution has the burden) the denial
7 of an accused person.
8

9 It was said that reports came from Tokyo.
10 That ITAGAKI admitted that there were such reports.
11 That the Foreign Minister instructed the consul at
12 Mukden to stop what was rumored to be going on. That
13 TATEKAWA was sent to Mukden for that purpose. That
14 the central authorities sent him in order to control
15 the Kwantung Army. No doubt there were reports and
16 rumors. There always are. Wars and rumors of wars, it
17 has been said. But if the central authorities were so
18 concerned and so motivated, they would not have sent
19 TATEKAWA, for TATEKAWA is said by the prosecution to
20 have been one of the plotters.
21

22 II THE MUKDEN INCIDENT

23 At HH-8, it is argued that because TATEKAWA
24 did not immediately deliver the message he carried,
25 ITAGAKI put him off until the next day. ISHIFARA¹

1 testified that ITAGAKI and TATEKAWA met in the evening
2 and under an arrangement to meet the next day separated
3 for the night.¹ We can see nothing untoward or unusual
4 in that. TATEKAWA had just arrived after a hard jour-
5 ney, complained of being tired and, no doubt, wished to
6 retire early.

7 The prosecution, at PH-10, argues that ITAGAKI
8 assumed the duty of directing the operation on the night
9 of 18 September 1931. ITAGAKI's duty was not opera-
10 tional, he did not have authority to direct operations,
11 and did not direct them. HIRATA had and exercised such
12 authority and, because ITAGAKI, a staff officer, hap-
13 pened to be present, asked his assurance. ITAGAKI,
14 knowing that what HIRATA proposed was in line with
15 Commander in Chief HONJO's wishes, gave such assurance.
16

17 At PH-11 HAYASHI's alleged pleading with
18 ITAGAKI to stop the military action came after the
19 action had commenced and the fighting was in progress.
20 It could not be stopped, even had ITAGAKI possessed
21 the power to stop it, which he did not.

22 III THE CREATION OF A PUPPET STATE

23

24 At PH-13 the obvious intimation is that mili-
25 tary administration of Mukden was set up because DOIHARA
1. Tr. 18,927, 30,267-8

1 was made mayor. The evidence shows ¹ that this was a
 2 temporary arrangement to serve until a competent
 3 Manchurian person could be selected and one soon was. ²

4 YAMAGUCHI did not testify, as claimed, that
 5 ITAGAKI approved the appointment of DOIHARA as mayor.
 6 That YAMAGUCHI said was: that ITAGAKI approved autonomous ³
 7 operation of the railroad by Manchurians.

8 At HH-14 the prosecution asserts that the
 9 Self-Governing Guiding Board policies and activities
 10 were controlled by ITAGAKI and that the witness KASAGI
 11 so testified. This is another error or twisting of
 12 the testimony, for KASAGI said that he believed the
 13 money to support this organization came from the Kwantung
 14 Army, that approval by it was required, and that ITAGAKI
 15 was in charge of this division. ¹ He did not specify
 16 which division and he had listed eight divisions. It
 17 may be noted that this witness said that with Pu-yi as
 18 the central figure the independence movement gradually
 19 took shape. ²

20
 21 With respect to certain suggestions of
 22 ITAGAKI serving the independence movement, KATAKURA
 23 said that "It may be said that ITAGAKI's meeting with
 24 prominent leaders of Manchuria in various areas of that

25 2. Tr. 18,927, 30,267-8 1. Tr. 18,927, 30,267-8
 3. Tr. 18,819
 1. Tr. 2793-4
 2. Tr. 2809-11

country and as a result of his assurances given to them at these interviews, that Japan had no intention of occupying Manchuria or any territorial designs on Manchuria. it may be said that this assurance given by Colonel ITAGAKI served as a sort of a suggestion to them in carrying on their independence movement."

At HH-15 it is asserted that the Japanese supplied Chang Hai-peng with 3,000 rifles and 200,000 Yuan. There is no real evidence to this effect. Only hearsay. That HAYASHI telegraphed that Chang told him that. ¹ In another telegram HAYASHI transmitted some more hearsay, ² only this time it was 5,000 instead of 3,000 rifles.

That Japanese adventurers called themselves a National Guard Unit was based on a policy decided and executed by ITAGAKI was but the opinion and conclusion of MORISHIMA, the super diplomat.

At HH-16 it is said that while ITAGAKI said the anti-Japanese movement in Manchuria prior to the incident was active and intense, afterward he claimed that the common desire was for the creation of an independent state and leaders in many provinces came forward favoring separation from China. ITAGAKI, in connec-

3. Tr. 18,943, 19,081
1. Ex. 2407, tr. 37,324
2. Ex. 2406, tr. 37,322

1 tion with this subject, wasn't talking about the same
2 people at the times referred to. The anti-Japanese
3 movement was on the part of the Chang Kai-shek contin-
4 gent of the Chinese people, including the Chinese army.
5 Those favoring an independent state were Manchurians.

6 At HH-18 it is stated that DOIHARA said, in
7 his interrogation, that ITAGAKI arranged the details
8 of his meeting with Pu-Yi, but he did not specify the
9 details. ITAGAKI¹ told this Tribunal that the Commander
10 in Chief, HONJO, ordered DOIHARA to Tientsin and gave
11 him his instructions regarding intelligence work and to
12 sound out Pu-Yi. That he, ITAGAKI, looked after
13 arranging, through the intence officer, for his ex-
14 penses.³ KATAKURA also so testified.⁴ At HH-20, upon
15 his return from Tokyo HONJO ordered ITAGAKI to visit
16 Pu-Yi.⁵ According to ITAGAKI, Pu-Yi's stalling on the
17 matter of becoming the head of the new state was con-
18 cerning whether it would have monarchical form of govern-
19 ment. Pu-Yi said it was because ITAGAKI demanded em-
20 ployment of Japanese as Manchurian officials. Comment
21 will be made a little later regarding the quality of
22 Pu-Yi as a witness. Sufficeth it to say, at this point,
23

24 1. Tr. 2809-11

25 2. Tr. 30,375-80

3. Tr. 30,375-80

4. Tr. 18,970

5. Tr. 30,284

1 that it does not require any great stretch of the
2 imagination to reach a belief that Pu-Yi, the last
3 of the Chinese Emperors, was extremely anxious to be
4 restored to the throne. That was but a natural desire
5 on his part. And so wishing, it would also be natural
6 that he would be interested primarily in the form of
7 the government to be. He naturally wanted to be Emper-
8 or, as he had been of all of China, and if possible, he
9 wished to avoid taking the post on a basis of anything
10 less. So, according to ITAGAKI, supported by the cir-
11 cumstances as he is, Pu-Yi stalled, hoping to accomp-
12 lish a monarchical form of government. As anxious as
13 he was to become Emperor, he would not have been so
14 concerned about whether some Japanese, who had the know-
15 how, were employed in the new government. And, any-
16 way, if the situation was as the prosecution claims,
17 there would be no reason for ITAGAKI to dicker with Pu-
18 Yi concerning employment of Japanese. If they dom-
19 inated everything, as the prosecution asserts and were
20 acting as puppetiers, they would have falsely agreed
21 to Pu-Yi's wishes and later failed to carry them out.
22 On this issue we submit that ITAGAKI's version is es-
23 tablished. If any doubt exists respecting the same,
24 that doubt must be resolved in favor of the accused.

25 Pu-Yi testified at this trial that while

1 heading the government of Manchukuo, he had no freedom
2 of speech and that when the Lytton Commission inter-
3 viewed him he could only say what the Kwantung Army per-
4 mitted him to say. He was a prisoner of the Japanese,
5 he said. It is certainly fair argument to say that if
6 he could not tell the Lytton Commission the truth be-
7 cause he was then a prisoner of the Japanese, by the
8 same token he could not tell this Tribunal the truth,
9 because he was for a long time previous, at the time of
10 his appearance here, and, so far as we know, he still
11 is, a prisoner of one of the Allied Powers. We submit
12 that he had, at the time he appeared here as a witness,
13 no more freedom than when the Lytton Commission inter-
14 viewed him. The "gun in the back formula" works both
15 ways.

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IV CONTROL OF MANCHUKUO.

1 At HH-22 it is stated that Pu-Yi said that
2 ITAGAKI was a supporter of the Concordia Society.
3 YAMAGUCHI and OZAWA said he was not a member of the
4 committee.¹ The prosecution bases its claim upon
5 the Decennial Year Book of the Concordia Society as
6 showing that ITAGAKI was one of its committee mem-
7 bers. We decline to be bound by whatever that so-
8 called year book may set out. It was compiled and
9 published by and in Russia and published ten years
10 after that society was formed.

11 At HH-23 they say the Kwantung Army was
12 given the authority and an outline for guiding
13 Manchukuo and that Manchukuo was completely dominated
14 by the Japanese.² Manchukuo, newly born, had neither
15 the knowledge nor the equipment to manage and carry
16 on the complex and difficult matters which confronted
17 it. It has no army or other peace restoration and
18 maintenance organization. Manchukuo welcomed the
19 action of the Kwantung Army in restoring and main-
20 taining peace and order. In this, and in other ways,
21 the Japanese assisted the new state. The prosecution
22 calls this domination.

23 At HH-24 it is asserted that ITAGAKI was
24 1. Tr. 18,851-2, 30,076-7 2. Ex. 731, Tr. 7,606
25

1 connected with the narcotic traffic, and with MINAMI
2 and TOJO, endeavored to set up the Opium Monopoly
3 Bureau. In support of this statement the prosecution
4 makes reference to exhibit 383.¹ Exhibit 383 con-
5 sists of excerpts from the minutes of the 22nd
6 session of the League of Nations Advisory Committee
7 on Traffic in Opium. ITAGAKI, MINAMI and TOJO are
8 not mentioned therein.

9 V. INNER MONGOLIA, NORTH CHINA AND ALL
10 CHINA.

11 In regard to Chahar, at HH-26 the prosecu-
12 tion claims that there was no need for the actions
13 which occurred there; that the Chinese agreed to and
14 did withdraw therefrom. TANAKA was a prosecution
15 witness on July 6, 1946 and, respecting the treaty²
16 made between the Inner Mongolian Autonomous Council
17 and Manchuria, said that: "This treaty definitely
18 was not concluded because of the demands of the
19 Kwantung Army, but because of the earnest desire of
20 Prince Teh himself."
21

22 At HH-27, in its argument, it is asserted
23 that after ITAGAKI was promoted to be Chief of Staff
24 in 1936, he said to ARITA that if Outer Mongolia is
25

1. Tr. 4711-3
2. Tr. 2042

1 combined with Japan and Manchuria, the Soviet terri-
2 tory in the Far East would fall into a very dangerous
3 condition. True, in exhibit 761-A, such a statement
4 does appear but, it was made by ITAGAKI as part of
5 a lengthy conversation between him and ARITA in
6 which, before the statement was made, ITAGAKI had
7 been saying, among other things, that the Kwantung
8 Army was deeply concerned about the Russian problem;
9 that Russia's national military power had been increas-
10 ing; that its troop strength amounted to more than
11 1,400,000; that organization, equipment, disposition
12 of forces were being rearranged to attain the most
13 ideal kind of an army; that Russia had come to be
14 called, both in name and reality, the most powerful
15 army nation of the world; that the development of
16 her heavy industry had attained her expected results
17 and especially in the case of munitions productions
18 she was capable of producing them independently; that
19 her light industry had also developed; that in
20 agriculture she had nearly completed socialization;
21 that the Russian Government had succeeded in estab-
22 lishing a firm dictatorship; that observing the situa-
23 tion in the Far East, in which Japan had special
24 concern, we could not but convince ourselves that
25 the Soviet is preparing for operations by force and

1 is strengthening her power, of prosecuting war alone;
2 that we may say this because she is overtly advocating
3 the independence of Far East military preparations
4 and has assigned more than 200,000 troops and nearly
5 a thousand planes and tanks to the Far Eastern Dis-
6 trict; that she is replenishing communications and
7 supply functions at great cost; that under such cir-
8 cumstances, the Soviet's attitude toward Japan had
9 gradually stiffened and become more active in com-
10 parison with her inactive and negative attitude two
11 and three years ago, although she had not yet assumed
12 to be provocative; taking advantage of Japan's weak-
13 ness; that since the year before the foreign strategy
14 of the Third International had been so revised
15 actively as to assume Japan as their main object;
16 that they resolved to cooperate in fighting with all
17 anti-war members, withdrawing the banner of communism
18 from the surface and advocating anti-fascism or anti-
19 Imperialism; that the Bolshevization Patriotic Move-
20 ment by communist forces in North China was replaced
21 with the slogan of Anti-Japanese Patriotic Movement;
22 that though the number of bandits all over eastern
23 Manchuria had been reduced, the communist bandits
24 were still increasing their power by annexing other
25 bandits and taking a firm attitude with regard to

1 boundary questions, fishery as well as other problems
2 concerning Manchuria.

3 It was part of the discussion had between
4 ITAGAKI and ARITA as to what might be done to meet
5 the Russian menace which had just been described.
6 The prosecution argument says that ARITA and ITAGAKI
7 talked about the importance of Outer-Mongolia to
8 Japan and Manchuria. This is a twisting of the
9 fact about that. What they talked about was the
10 Russian menace and, incidentally, while talking
11 about that, the Outer-Mongolian matter was mentioned.

12 The argument at HH-28 that ITAGAKI favored
13 army leadership, instead of diplomatic, should handle
14 negotiations with China, is based upon an item in
15 KIDO's Diary, where he says that SHIGEMITSU so stated
16 to him. More hearsay.

17 Then, it is said that ITAGAKI and DOHIHARA
18 needed a pretext to set up an autonomous regime in
19 North China and decided to use anti-communism as a
20 slogan. This might well make one wonder whether
21 there are those who will say that because one of the
22 Allied Powers is now spending billions of dollars
23 in an anti-communistic effort, it is doing so as a
24 pretext for something else. The Japanese had good
25 reason to fear communism and it is not surprising

that they took steps to combat it.

1 At HH-29 it was sought, by argument, to
2 hold ITAGAKI responsible for mobilization orders,
3 issued by the Commander in Chief, to prepare forces
4 outside the Great Wall in China. ¹ Shown the exhibit,
5 ITAGAKI said it purported to be what it said, but
6 that he had not seen it before and as to such
7 mobilization, he had heard, later, that there had
8 been ordinary peacetime troop movements. While
9 ITAGAKI was, at the time, Vice-Chief of Staff, he
10 was also assistant military attache of the embassy
11 and his duties in that capacity occupied his time
12 and attention so that, obviously, he was not familiar
13 with the army orders above referred to.
14

15 At HH-30, it is asserted that the Tokyo
16 Government was concerned about the activities in
17 North China and that in connection with this the
18 witness GOTO specifically mentioned ITAGAKI. That
19 witness ² said the highest officers in the Army at
20 that time were -- and he named seven -- one of whom
21 was ITAGAKI. The witness, therefore, merely said
22 that ITAGAKI was one of a number of higher officers.
23

24 At HH-31 it is said that ITAGAKI was
25 Commander in Chief of the Fifth Division in Japan

when, in July, 1937, fighting broke out in China;
1 that he was attached to the General Staff Office
2 shortly before that; that he was, after the fighting
3 began, sent to the front. To support this the
4 prosecution points to exhibit 110, ITAGAKI's person-
5 nel record which, under date of May 25, 1937, shows
6 him attached to the Army General Staff Office.
7

8 This was an error in exhibit 110 not dis-
9 covered by us until now. We submit that the date of
10 ITAGAKI's appointment to the General Staff Office,
11 shown in the exhibit as May 25, 1937 should have
12 read "1938" instead of "1937." Any military man will
13 know that no commander of a division at the front
14 would be a member of the General Staff at the Capitol,
15 and the evidence in this case shows that he was com-
16 mander of the 5th Division at Hiroshima, sent to
17 China and that he came from China to become War
18 Minister on June 3, 1938. Exhibit 110 correctly
19 shows him appointed War Minister on that date, but
20 the translation of the entry in his personnel record
21 is faulty in respect to his post as being attached
22 to the General Staff Office. Correctly translated
23 it reads: "Relieved of attachment to the General
24 Staff Office and appointed War Minister. . . ."
25

1 Without more, we think it is clear that he was at-
2 tached to the General Staff Office as of May 25, 1938
3 (agreeable to the usual custom of issuing such an
4 order to bring an officer from the front to install
5 him as War Minister) and, as of June 3, 1938, he was
6 relieved and made War Minister. He was, therefore,
7 attached to, but did not serve on, the General Staff,
8 from May 25, 1938 to June 3, 1938.

9 It is true that ITAGAKI was well acquainted
10 with China and was an authority on Chinese affairs
11 and had an affection toward Chinese people. We sub-
12 mit that the remark the witness Goette attributed to
13 him does not show the contrary. Goette was another
14 witness evidencing a desire to talk, based, no doubt,
15 on his story writing proclivities. And, the remark,
16 if made, was obviously not seriously intended for,
17 if any army officer of any army had knowledge of
18 planned military movements to be carried out in the
19 future, he would not be imparting that information to
20 a newspaper reporter.

21 VI. WAR MINISTER, 1938-1939.

22 ITAGAKI was in favor of withdrawing the
23 troops and quickly ending the difficulties with
24 China; in favor of modifying the terms previously
25 submitted to China to such that China would accept.

1 ISHIIHARA and KONOYE held the same view. That the
2 fighting intensified after ITAGAKI became War
3 Minister and peace with China was not attained does
4 not prove that ITAGAKI was not of the opinion and
5 purpose he testified he had. There was opposition.
6 Also, he was new in his post and it is reasonable
7 to suppose that he could not accomplish his desires
8 immediately. That he was never able to accomplish
9 them still does not mean that he did not entertain
10 them.

11 When he became War Minister, plans had al-
12 ready been made for the attack on Hankow, and that
13 fact no doubt occasioned his statement that it was
14 believed it was unavoidable. What ITAGAKI said was,
15 "at that time, as it was believed that the Hankow
16 operation would be unavoidable in view of the general
17 situation, the Supreme Command of the Army had just
18 commenced preparations for that operation." It
19 wasn't ITAGAKI saying such attack was unavoidable.
20 He was saying that the Supreme Command of the Army
21 so believed.
22

23 The policies urged by ITAGAKI were, in the
24 main, adopted by the Five Ministers' Conference.
25 No record was made or preserved, and we have no way

1 of knowing what such decisions were except we ob-
2 tain the information from someone who was present
3 at the decisions. The evidence shows no one was
4 present other than the ministers -- no secretary,
5 no stenographer, no clerk. This Tribunal has heard
6 from two persons who were present. The prosecution
7 relies upon (1) documents found in the Japanese
8 Foreign Office (admitted here only because so found,
9 but with no showing as to their authorship or
10 verity), and (2) passages in the HARADA-SAIONJI
11 Memoirs which, admittedly, are hearsay, with no
12 disclosure of from whom or where the initial peddler
13 of the hearsay got his information. Matters of that
14 character would not be admissible at all in the
15 national courts. Here, though admitted, they ought
16 not be given much weight, if any. As against the
17 testimony of persons present at the time such de-
18 cisions were made, this being a criminal case and
19 the prosecution required to establish beyond a reas-
20 onable doubt, it does not operate to equal, let
21 alone exceed, in weight the testimony of those per-
22 sons.

23
24 We learn from the testimony of UGAKI^{1.} that at
25 times proposals were submitted to the Five Ministers'

Conference in written form and that on such occasions
1 written proposals in relation to national policy were
2 signed by UGAKI and handed to his subordinates. That
3 if any such (and obviously the witness had reference
4 to those written proposals) are held at the Foreign
5 Office, they are not originals unless they bore his
6 signature. The witness, here, was referring to
7 written proposals, not decisions. Judge Nyi was
8 either confused about this or inadvertently so framed
9 his question¹ when he asked UGAKI, "Then in such a
10 case you wouldn't be surprised if you were shown
11 any document containing a decision of the Five
12 Ministers' Conference, although it doesn't bear your
13 signature, would you?"² The witness at no time
14 said his signature was on any instrument containing
15 a decision of the Five Ministers' Conference, but he
16 did say (and ITAGAKI also said it) that there never
17 were any such.
18

19 On all the competent and creditable evidence
20 in this case the prosecution has not established the
21 Five Ministers' Conference decisions mentioned in
22 its argument. Remember, ITAGAKI said that in the
23 main, his views were adopted. It is apparent, and
24

- 25 1. Tr. 38,816
2. Tr. 38,816

1 to be expected, that after he became War Minister,
2 he was not able, immediately, to accomplish adoption
3 of his views. On the matter of the Japanese policy
4 of not dealing with Chiang Kai-shek, he favored and
5 urged abandonment thereof, but it was not until
6 November or December of that year that such abandon-
7 ment was attained and then only attained by the
8 action of the government itself.

9 Five Ministers' Conference decisions had to
10 be unanimous or there was no decision, and thus the
11 refusal of even one minister prevented a decision.

12 In that part of its argument relating to
13 this subject and designated HH-33, prosecution says:
14 "The records of the conference speak for themselves."
15 There is no evidence in the record that these instru-
16 ments are "records of the conference." This Tribunal
17 knows they are not, for the evidence shows (and the
18 President himself developed this fact) that no
19 records were made or kept. The prosecution has
20 presented no evidence disputing this. Nor has it
21 explained how these documents, alleged by it to be
22 records of such decisions, came into existence, by
23 whom they were compiled or what the source of the
24 compiler's information was. We have no doubt that
25 the prosecution was unable to ascertain as to that.

1 We say if we or this Tribunal could reach
2 down into the darkness of the lack of evidence in this
3 score and drag the truth out, it would be found that
4 these instruments were written up by workers in the
5 various government offices in connection with proposals
6 to be laid before the conferences and anticipatory of
7 decisions expected. Then, later, some unidentified
8 person or persons gathered up these anticipatory decis-
9 ions and compiled them into the documents presented here.
10 Suppose no record was made of the proceedings here and
11 counsel on both sides drafted various documents, includ-
12 ing tentative drafts of argument herein. Suppose,
13 later, there being no record of what actually was intro-
14 duced and given to this Tribunal, in some such Tribunal
15 as this, those preliminary or tentative or anticipatory
16 drafts were offered and received in evidence as being
17 what such counsel did or did not do. We have seen just
18 such a thing as that occur in this case. In the cross-
19 examination of the witness UGAKI, Judge Nvi had the
20 witness examine Exhibit 269 and asked him if that was
21 not a report which he made to the Emperor.¹ The instru-
22 ment was not even entitled report to the Emperor, but
23 was plainly designated as "Materials for the Private
24 Report to the Emperor by Minister UGAKI. . ."² Yet
25

1. T. 38,822 - 27

2. T. 3584

1 Judge Nyi, in his confusion or zeal, seemingly was under
2 the impression that the instrument was a report, or a
3 copy of a report, made by Mr. UGAKI to the Emperor.
4 Judge Nyi wanted to know of this witness what he could
5 not discern himself, viz., whether the instrument¹ was
6 a correct copy of the report that UGAKI made to the
7 Emperor. He found out. For the witness answered:
8 "As it states, this consisted of materials to supply
9 my mind with ideas on the basis of which I was to make
10 a report to the Throne, and I state that this document
11 contains the opinions of the First Section, which drew
12 up this document, as its opinions and as its desires as
13 being the views which that section wanted conveyed to
14 the Throne. The contents of this document do not repre-
15 sent my opinions, and consequently they were not the
16 opinions I reported to the Throne."²

17 At all events, it is most unsatisfactory
18 evidence to be offered and received in any case. Espec-
19 ially so in a case in which men are on trial for their
20 lives. While we felt, and still feel, that they should
21 not have been admitted at all, we submit that they
22 should be given but little, if any, weight.

23 The declaration of the Japanese Government
24 mentioned at PH-34 of the prosecution's argument, came
25

1. Ex. 269

2. Tr. 38,824

1 after efforts to arrange peace with China had all failed
2 and the Chang Kai-shek regime was continuing its anti-
3 Japanese and pro-communistic policies and conducting
4 increasingly heavy attacks. Japan, under the KONOYE,
5 ITAGAKI, ISHIHARA policy, was willing and tried to deal
6 with Chang Kai-shek, but received no response from him.

7 At HH-35, they assert that ITAGAKI had sent
8 1,600,000 troops to China. This argument is based upon
9 an entry in KIDO's Diary to that effect. But in ¹ his
10 cross-examination, KIDO said that he felt that figure
11 was too large. He said: "I think it was under one
12 million." and that the War Minister spoke of decreasing
13 to 650,000.²

14 At the same place in their argument, they
15 referred to exhibit 3304,³ an order issued by the
16 Vice-Minister of War in February 1939, concerning Army
17 discipline and control of speech of returning soldiers
18 regarding their exploits, examples of such being set out.
19 Naturally, the prosecution argues that this instrument
20 proves that atrocities such as are mentioned in the
21 examples had occurred, had been brought to the attention
22 of the War Ministry, and that the Vice-Minister promulgat-
23 ed the order to prevent returning soldiers from telling
24

- 25 1. Tr. 31,386
2. Tr. 31,386
3. Tr. 30,126

1 about such atrocities after their return. It is no
2 doubt fair argument for the prosecution to indulge in.
3 However, it falls far short of establishing any such
4 facts. The prosecution read only a few lines from
5 pages 4 and 5 of the exhibit, which was the part thereof
6 which set out examples. It did not read the following:

7 Page 3. "The military forces and the men
8 returned from the disturbance area are generally well-
9 disciplined and well-behaved. They are a credit to the
10 Army, and are careful about their speeches and actions
11 but among a fraction of them, overcome by the welcome
12 accorded them ... etc... there are not just a few who
13 do not restrain their speeches and actions. There are
14 some who, upon their return to their homes after being
15 discharged wish to boast of their honor or merits, and
16 fabricate stories about their officers and other units,
17 and thus abuse them, boast about tragedies in the battle-
18 field, allow military secret facts to leak through in
19 their attempts to appear well-informed, exaggerate the
20 slackness of military discipline and morals for the sake
21 of telling stories, etc. The speeches mentioned above
22 sometimes not only become the cause of rumors but also
23 may affect the trust of the people in the Japanese Army,
24 impair the unity of the people at home," etc.¹
25

1. Ex. 3304, Tr. 30,126

1 Instances are then given, beginning with, (1) There are
2 some men who leave the ranks without reason to speak
3 to welcoming parties and, following the sixth example
4 of that kind, in respect to speech, there follow the
5 examples, many of which were read in evidence.

6 The witness YAMAWAKI (3) testified that the
7 purpose of this order was to restrain irresponsible
8 persons from sounding off relative to military matters
9 and discipline, making mountains out of mole hills and
10 exaggerating gossip and rumor which they had picked up.
11 That it was felt necessary that the officers take care
12 that their men were cautioned about such matters, as
13 they would cause baseless rumors and an undesirable
14 effect upon discipline. It is well known that returned
15 soldiers, in all countries, are prone to brag about their
16 exploits, even to create stories of the kind, and to
17 restrain such conduct is a thing which every army natur-
18 ally does. To utilize examples given of rumors and
19 exaggerations as facts is something like "when a dog
20 barks a false alarm, a thousand curs take up the cry."
21 While this argument is in progress we note that one of
22 the Allied Powers has issued an order prohibiting all
23 Army and Navy personnel from talking or making any
24 statements regarding military affairs, unless such
25 proposed statement is first reduced to writing, submitted

to the War or Navy Department and approval obtained.
It may also be noted that there is no evidence anywhere showing that ITAGAKI had any knowledge of any such alleged misconduct on the part of Japanese soldiers.

When the Chang Kai-shek Government would not and did not exhibit any indications of a sincere desire to establish peace, and knowing that a large portion of the Chinese people favored such action, it was but natural that Japan would contact the intelligent men among them with a view of accomplishing peace.

At HH-37 the assumption is indulged in that exhibit 3302 shows that ITAGAKI and DOIHARA performed in China in the name of "peace", what they had done in Manchuria in the name of "independence". In Manchuria the desire for independence was on the part of the Manchurians. In China it was Japan which desired peace.

The prosecution counts on the matter of Wang, Ching-wei, a Chinese Government official, who favored peace with Japan, escaping from China and later assisting in the effort to establish peace.¹ Wang was one of the many intellectual and influential Chinese who were so disposed. That he was assisted in his travel from China, to Indo-China, to Shanghai and to Japan, is natural.

1. Tr. 38-39

At HH-40, in offering IPS document 1005 (1),
 which became exhibit 3744, Judge Nvi stated that same
 was offered to rebut ITAGAKI's denial that the so-called
 National Salvation Anti-Comintern League was financed
 by Japan.¹ ITAGAKI was asked² if it was not financed
 by Japan and he replied: "I hardly think it possible."³
 This may have been an inadvertence but the foregoing sets
 out what occurred and now, in argument, the prosecution
 says it was not financed by Japan.

At HH-47 it is stated that ITAGAKI asked per-
 mission to use force at Changkufeng and that preparations
 be made. The testimony of UGAKI,¹ does not bear out
 the statement regarding the use of force.² The state-
 ment which was attributed to ITAGAKI was only that, as
 the Russians might cross the border, preparations should
 be made.

At HH-49 it was asserted that ITAGAKI confided
 to YAMAWAKI that Britain and France might be the next
 objective. The information given YAMAWAKI by ITAGAKI³
 was a statement that the Japanese Government's basic
condition regarding the pact was to the effect stated,
 not that it was ITAGAKI's condition.⁴

1. T. 30,396
 2. T. 30,436
 3. T. 30,436
 4. T. 23,885-6

5. T. 23,885-6
 6. T. 30,104
 7. T. 30,104

1 At HH-50, it was stated that when Hitler seized
2 part of Czechoslovakia, ITAGAKI sent his congratulations.
3 This statement is based upon a newspaper story, as also
4 was the assertion that ITAGAKI declared it was a welcome
5 fact that Germany and Italy had bound themselves together
6 by military alliance.

7 THE LAW

8 Throughout this trial there has been frequent
9 mention of conspiracy. No count of the Indictment
10 herein charges conspiracy. To determine what is
11 charged the charging part of an indictment must be
12 looked to. When one examines the charging part of
13 each of the so-called conspiracy counts of the Indict-
14 ment herein, we find that the charge is not that the
15 defendants "conspired", "confederated", "combined" and
16 "agreed" together and with each other (the usual language
17 employed in indictments charging the crime of conspiracy),
18 but that they "participated" in the formulation or
19 execution of a common plan, etc. In all conspiracy
20 cases with which we are familiar the verb used in
21 charging that crime was "conspired", or some such verb.
22 Here, the verb employed is "participated". Participa-
23 tion, in itself, never has been and is not now, a crime.
24 Participation in a joint criminal enterprise is commonly
25 ~~the evidence used to convict the participants. Convict~~

1 them of what? Convict them of the crime charged, whether
2 that charge be larceny, robbery, murder or conspiracy.
3 Participation is never the crime, but may be evidence
4 of the crime. The crime attempted to be charged, in
5 which they participated, must be charged in language
6 clearly informing the accused of the charge against
7 him. The gist of the crime of conspiracy is the plotting,
8 planning, arranging, between two or more persons, to
9 commit a designated crime. The conspiring is the crime
10 declared against.
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The alleged conspiracy counts of the Indictment herein charge the "formulation" and "execution", in the disjunctive, using the disjunctive "or", as also, are stated "common plan" and "conspiracy", so that the accused are charged with formulation or execution of a common plan or conspiracy. Which? The pleader did not say. The courts in the United States have repeatedly held that an indictment which charges one thing and another, using the disjunctive "or", does not charge anything, but is indefinite and uncertain as to what is meant to be charged and the accused cannot know with what or which he is charged. Suppose, in an indictment attempting to charge the crime of larceny, the language employed is: "did steal, 'or' 'take', 'or' carry away, the personal goods and chattels of John Smith," etc. Which did he do, steal or take? And did he steal or carry away? To make out the crime of larceny he must have, at least, done both, steal and carry away, and the indictment must so charge. The result here is there is no charge, in respect to conspiracy, which the accused are called upon to meet, and they must be discharged.

Frequently during this trial mention has been made of the prosecution claim that nothing occurred in Manchuria which justified the Japanese in

1 taking the action which was taken and that the killing
2 of persons was wholly unjustified. We admit that
3 there is, at the present day, not much difference,
4 but it should not be entirely lost sight of that in
5 respect to homicides and matters of self-defense,
6 there are two categories: (1) justifiable homicide,
7 and, (2) excusable homicide. It has been said that
8 really there is only one justifiable homicide. One
9 where the taking of the life of a human being is upon
10 the authority of a valid order of some court. Self-
11 defense, it has been said, does not fall within the
12 category of the killing being justified. Rather,
13 it is a matter wherein, though some blame attaches
14 to the one causing the death, in the eyes of the law
15 he is excused. It may well be that the situation in
16 Manchuria was one of the character in which it would
17 be better to say that their acts claimed to be in
18 self-defense were, therefore, excusable.

19
20 Anciently, but now abandoned in most juris-
21 dictions, the law of self-defense required the per-
22 son attacked to retreat - to retreat to the last
23 ditch or until his back was to the wall, before he
24 would be excused for killing his assailant. The mod-
25 ern concept is that he is not required to retreat
~~but may stand his ground and, upon proper circumstances,~~

1 take the life of his adversary. It is not believed
2 that nations were ever required to observe the cut-
3 moded doctrine of retreat to the last ditch. Certain-
4 ly they are not at the present time. That was the
5 situation of Japan in Manchuria. Being in a place
6 where, under treaty and contract rights, it and its
7 nationals had a right to be and, under international
8 law being the sole judge of whether it was required
9 to take defensive measures, it was not, when assailed
10 by the Chinese, required to retreat (abandon its rights
11 and interests in Manchuria) but had a perfect right
12 to take such measures as were necessary to defend it-
13 self and its nationals. It did just that. It does
14 not lie in the mouth of the victor to review Japan's
15 decision in that respect and assume to judge, now,
16 whether it acted in self-defense. International law
17 has never set up any machinery for determining any
18 such matter and there exists no court, or body of any
19 kind, anywhere in the world, which has the authority
20 and power to conduct any such review.

22 Frequently during this trial mention has been
23 made of ex post facto law. We will not prolong the
24 debate upon that subject, beyond saying that we be-
25 lieve that in the view of lawyers in the Anglo-Saxon
category, the alleged laws attempted to be applied here,

1 were created for the purpose of trying the accused
2 and are ex post facto.

3 These alleged laws, tailored for the purpose
4 of this trial, obviously rest upon the basis of
5 "the end justifies the means." It required centuries
6 for freedom-loving people at various places in the
7 world to achieve relief from the Star Chamber session
8 and to have and to be able to maintain certain funda-
9 mental rights and liberties. They are not safe merely
10 by reason of having secured such rights and liberties,
11 but must always be on guard against attempts made from
12 time to time to break down those safeguards. These
13 attempts to break down such safeguards have been and
14 are seen from time to time when organized groups of
15 persons actuated by a single purpose, to the exclusion,
16 of all others, set about an "end justifies the means"
17 attack on them. We have seen such examples as the
18 so-called prohibition, where the proponents of such
19 idea brazenly flouted the Constitutions of the United
20 States and the several states and openly stated that
21 if the safeguards concerning rights and liberties
22 interfered they should be ignored in the interest of
23 law enforcement. The desire of millions of American
24 citizens that officers of banks which closed during
25 the depression period be sent to prison caused a wave

1 of hysterical prosecutions and some convictions which,
2 fortunately for good government, the reviewing courts
3 set aside. The Congress of the United States at this
4 moment is considering the passage of a law, recommended
5 by its President, making lynching a Federal offense.
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SPECIFIC INTENT

1 As is well known, there are certain crimes
2 which has as an essential element the requirement
3 of specific intent. Among these are murder, malicious
4 mayhem, conspiracy, burglary, larceny, etc. In
5 England no one could be guilty of a crime unless he
6 had, at the time of the alleged commission of the
7 offense, a guilty mind. In no case involving the
8 element of specific intent can there be a proper con-
9 viction unless the accused had, at the alleged time
10 of commission, an intent of that kind. The specific
11 intent in murder is the particular intent to kill a
12 human being without excuse or justification. In
13 larceny it is to permanently deprive the owner of his
14 property. In malicious mayhem it is to deprive the
15 injured party of one of his members. The required
16 intent must have existed at the time of alleged com-
17 mission and such intent afterward formed does not make
18 out the offense. We assume that this Tribunal will
19 recognize the well-established law in respect to
20 intent. As murder and alleged conspiracy are charged
21 here, it should be considered that the accused, to be
22 properly held responsible must, at the times involved,
23 have had guilty minds and specifically intended the
24 things required to be particularly intended in those
25

crimes. In murder it must have been a specific intent
1 to kill a human being without excuse or justification.
2 In alleged conspiracy, the criminal object thereof.

3 On the evidence here we think it cannot be
4 said, beyond all reasonable doubt that the accused,
5 in respect to those charges, at the times stated,
6 had such intent and guilty mind. That his or their
7 acts may have resulted in the injury shown does not
8 entitle the prosecution to urge or this Tribunal to
9 find that the accused must have such intent, utiliz-
10 ing the presumption that every sane man is presumed
11 to have intended the probable and natural consequences
12 of his own voluntary acts. We say this because while
13 such presumption may be sufficient in cases not in-
14 volving the element of specific intent, such presump-
15 tion, in cases in which specific intent is a necessary
16 ingredient, is not sufficient, in i'self, to establish
17 the existence of such intent. There must be other
18 affirmative evidence showing the existence of such
19 specific intent. The presumption, alone, will not
20 suffice.
21

22 Justice Frankfurter, of the United States
23 Supreme Court, in Davis v. United States, 328 U.S.
24 582, said this: "Stern enforcement of the criminal
25 law is the hallmark of a healthy and self-confident

1 society. But in our democracy such enforcement pre-
2 supposes a moral atmosphere and a reliance upon
3 intelligence whereby the effective administration of
4 justice can be achieved with due regard for those
5 civilized standards. . . which are formulated in
6 our Bill of Rights."

7 "Such constitutional limitations arise from
8 grievances, real or fancied, which their makers have
9 suffered, and should go pari passu with the supposed
10 evil. They withstand the winds of logic by the depth
11 and toughness of their roots in the past. Nor should
12 we forget that what seems fair enough against a
13 squalid huckster of bad liquor may take on a very
14 different face, if used by a Government determined to
15 suppress political opposition under the guise of
16 sedition." said Learned Hand, J. in United States
17 v. Kirschenblatt, CCA 2nd., 16 F. 2d 202, 203,
18 51 ALR 416.

19 The principle to which these eminent justices
20 called attention might well be applied here by this
21 Tribunal. For, it may be said, the end never justifies
22 the means.

23 This Tribunal recognizes that the burden of
24 establishing the charges set out in the Indictment
25 rests upon the prosecution and that, before there can

1 be a conviction of any defendant on any of the
2 charges, the prosecution must have established guilt
3 beyond all reasonable doubt. What is reasonable
4 doubt? It is not a mere chimerical uncertainty but
5 is such a state of things that a prudent person
6 called upon to act in a matter concerning those near-
7 est and dearest to him, would hesitate to act at all.
8 It may be said that before the trier of a criminal
9 case can make a finding of guilty he, or they, must
10 be satisfied of guilt to the extent and degree that
11 one must be satisfied that his own mother is dead
12 before he permits the undertaker to screw down the
13 coffin lid.

14 THE PRESIDENT: Mr. Brannon.

15 MR. BRANNON: If the Tribunal please, Admiral
16 SHIMADA's summation is next. Do you wish to start
17 now?

18 THE PRESIDENT: We will recess for fifteen
19 minutes.

20 (Whereupon, at 1442, a recess was
21 taken until 1500, after which the proceed-
22 ings were resumed as follows:)
23
24
25

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language correction
6 is submitted:

7 Reference, record page 35972, line 24:

8 Delete "Yes, I found them," and substitute
9 "I see, there are initials."

10 Record page 35973, line 1: Delete: "THE
11 WITNESS: I found my initials."

12 THE PRESIDENT: Thank you.

13 Mr. Brannon.

14 MR. BRANNON: Mr. President and Members of the
15 Tribunal, I am afraid that there may be some repetition
16 here, which is, of course, due to the fact that we haven't
17 read each other's arguments in the limited time. So if
18 there is, I would appreciate being advised by the Tribunal,
19 and I will be glad to omit the parts.
20

21 THE PRESIDENT: We will not be very much con-
22 cerned unless they are very lengthy.
23
24
25

MR. BRANNON: (Reading) Introduction.

1 Vacillating between the realization that war
2 is the great anathema of civilization and the recogni-
3 tion of its apparent unavailability the many nations
4 of the world have in the present century collectively
5 condemned it and sought its prevention, deterrence or
6 regulation. In initiating a procedure invoking indi-
7 vidual liability for a kind of war termed aggressive
8 the prosecution here re-echoed this noble effort in
9 its opening address to the Tribunal. As a supremely
10 worthy concept it is not subject to criticism. But to
11 say that our specific purpose here is the prevention
12 of aggressive war while the broad aim is the orderly
13 administration of justice invites honest speculation
14 as to whether they have not transposed the objectives.²

16 1. There are, of course, those who deem war not only
17 unavoidable but necessary. HOLLAND, LETTERS TO "THE
18 TIMES" UPON WAR AND NEUTRALITY (1881-1909) (1914) 25.
19 " * * * Without war the world would stagnate, and lose
itself in materialism. * * *"

20 2. "At the very beginning of these proceedings it
21 is essential that those directing the prosecution
22 make clear their purpose. Our broad aim is the
23 orderly administration of justice; our specific purpose
is to contribute all we soundly can towards the end
-- the prevention of the scourge of aggressive war."
Tr. 384.

1 Rather should it not be stated that our
2 specific purpose is a fair and just determination of
3 the guilt or innocence of these men here accused.
4 In the clear light of reality the physical fact of
5 the trial itself, the mode of its conduction and the
6 interpretation of the law are all that we can contri-
7 bute to those who would undertake to solve the prob-
8 lem of war.¹ In this sense it becomes important not
9 only to interpret the law of individual liability but
10 also the law reciting the defenses which are available
11 to those so charged.

12 It is then with singular motive that counsel
13 devotes his efforts to the complicated task of review-
14 ing the evidence in such a manner as to render the
15 greatest assistance possible in this respect. Our
16 striving for brevity has been modified only by a
17 sincere attempt to treat the essential points of the
18 accused SHIMADA's case with the fullness they deserve.

19 Theory of the Defense.

20 The perpetration of aggressive war is the
21 crux of the charges here brought and such other
22

23 1. Cf. Wyzanski, The Nuernberg War Criminals Trial
24 (a communication to the Academy of Arts and Sciences,
25 Dec. 12, 1945) urging the better method would have
been to dispose of the accused by executive or poli-
tical rather than judicial action.

1 offenses as are named in the Charter flow as the
2 natural consequences therefrom. The burden of proof
3 and the obligation to convince the Court of the pri-
4 soner's guilt beyond a reasonable doubt as to all
5 facts and circumstances essential to the guilt of the
6 accused including the criminal intent are upon the
7 prosecution throughout the trial.¹ The burden is never
8 on the accused to establish any issue beyond a reason-
9 able doubt.² Regardless of the magnitude of the charge
10 of participating in the accomplishment of aggressive
11 war there exists no reason for the exclusion of the
12 common and ordinary defenses available to any accused
13 who faces the accusation of committing a crime. In
14 our discussion of the evidence directed against and
15 in favor of the accused SHIMADA we urgently call to
16 the attention of the Tribunal the doctrine of actus non
17 facit reum, nisi mens sit rea. (An act does not make
18 the doer of it guilty, unless the mind be criminal.)
19

20 That a crime is not committed if the mind
21 of the person doing the act is innocent is a sanctuary
22 of law as old as the common law of England itself and

23 1. Stafford vs. U.S. 300 Fed. 537; U.S. vs. Andrade
24 10 Fed. (2d) 572; Order affirmed 16 Fed. (2d) 776;
Tr. 22-23.

25 2. Ezzard v. U.S. 7 Fed. (2d) 808.

as new as the modern decisions of America.¹ It is a principle of jurisprudence so fundamentally sound as to need little discussion. The federal and state courts of the United States are in solid accord that to constitute a crime the act must be accompanied by a criminal intent on the part of the accused.²

The contention advanced that those nations who collectively contributed to the defeat of Japan have long since, through official utterances and victory on the battlefield, politically resolved the issue of aggression is a misguided criticism by those

1. 3 Inst. 107, Lord Kenyon C. J. 7 Term 514; Brown, Max. 306; 22 C.J.S. 84 N. 41; Com. v. Ober 139 N.E. 601, 286 Mass. 25; 16 C.J. 74, Note 86; State v. Blacklock 167, p. 714 (N.M.); U.S. v. Schultze D.C. Ky. 28 F. Supp. 234, 235.
2. 22 C.J.S. 84 N. 42. Herrman v. Lyle D.C. Wash. 41 F. (2d) 759. Moscovitz v. U.S. C.C.A. N.Y. 282 F. 575. Ala. Rogers v. State 122 So. 308. Cal. People v. Hoenschle, 22 P. (2d) 777. Fla. Smith v. State 71 So. 915. Ga. Green v. State 102 S.E. 813. Ill. People v. Fernow 122 N.E. 155. Mich. People v. Campbell 212 N.W. 97. Miss. Holmes v. State 98 So. 104. Mo. Schern v. Gallivan 10 S.W. (2d) 521. Mont. In re McCue, 261 P. 341. N.Y. People v. Gordon 204 N.Y.S. 184. N.C. State v. Agnew 164 S.E. 578. Pa. Com. v. Am. Agr. Chem. Co. 7 Pa. Dist. Co. 743.

as new as the modern decisions of America.¹ It is a principle of jurisprudence so fundamentally sound as to need little discussion. The federal and state courts of the United States are in solid accord that to constitute a crime the act must be accompanied by a criminal intent on the part of the accused.²

The contention advanced that those nations who collectively contributed to the defeat of Japan have long since, through official utterances and victory on the battlefield, politically resolved the issue of aggression is a misguided criticism by those

1. 3 Inst. 107, Lord Kenyon C. J. 7 Term 514; Brown, Max. 306; 22 C.J.S. 84 N. 41; Com. v. Ober 139 N.E. 601, 286 Mass. 25; 16 C.J. 74, Note 86; State v. Blacklock 167, p. 714 (N.M.); U.S. v. Schultze D.C. Ky. 28 F. Supp. 234, 235.
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1 who do not understand what we have here striven to accom-
2 lish. It is a confusion of the juridical with the
3 political, a factor which this Tribunal constantly strove
4 to avoid. The transcript is ablaze with evidence of
5 the Tribunal's wise and just endeavor to separate the
6 juridical from the political aspects pertaining to this
7 offense. It is nothing less than a tribute to the
8 integrity and honesty of the Tribunal that the starting
9 postulate of this trial was not that Japan waged aggres-
10 sive war with the issue narrowed only to what part
11 each defendant took therein. From the amazingly valu-
12 minous record exhausting nearly two years it is firmly
13 established that these accused were allowed to offer
14 proof that from their view the war or wars waged were
15 not aggressive.

16 In personal conflicts every man is permitted
17 within reasonable limits to act upon appearances and to
18 determine for himself when he is in real danger. Does
19 it not logically follow that a government official who
20 acted upon appearances and determined that his country
21 was imperiled ought to be allowed to prove every fact
22 and circumstance known to him or believed by him which
23 would have created an apprehension for the safety of
24 his country.¹ In speaking of the crime of murder

25 1. Magnifying the rule as expressed by Niblack, J., in
Boyle v. State 97 Ind. 322, 326 pertaining to self-
defense in murder cases.

which differs from the crux of the offenses here charged
 only in magnitude, it has definitely been stated that
 such acts as may be calculated to have created apprehension on the part of the accused before he acted are admissible in evidence as bearing on his state of mind.¹

Since it is not Japan itself that is under indictment the Tribunal has assumed only the responsibility of judicially establishing the individual guilt or innocence of these accused. Therefore the acceptance of such evidence as would reveal those happenings and events which may have influenced an accused in performing his functions or arriving at his decision was a necessary element toward the end of determining the requisite intent for the establishment of individual guilt or innocence. The Tribunal through the President on one occasion and the Acting President on another clearly announced its willingness to receive such evidence as would cast light upon why the individual accused acted as they did.² Such evidence was actually received throughout the course of the trial.

1. Eng. 1866 R. v. Hopkins, 10 Cox Cr. 229; Undusen v. U.S. 170 U.S. 481, 42 L. Ed. 1116, 18 Supp. 689; Wigmore on Evidence Sec. 246 p. 44.

2. Tr. 25,553, Tr. 34,680 - Defense exhibits 1482, 1739. These documents were top secret and highly confidential reports prepared by the Japanese Foreign Office on Anglo-American and Dutch activities prior to hostilities.

1 The acceptance by the Tribunal of the broad
2 and specific factual background that motivated or
3 influenced the accused is simply lending ear to the
4 doctrine that an act does not make the doer of it
5 guilty unless the mind be criminal. However, it has
6 been said that the construction of a law other than
7 the common law is a question of legislative intent.
8 This is the only deviation from the common law rule
9 that the scienter is a necessary element of a crime.¹
10 Therefore, to state the rule solidly and without criti-
11 cism, we can say that to constitute a crime the act
12 must, except as otherwise provided by law, be accom-
13 panied by a criminal intent on the part of the accused.²
14 Of course, no one can deny that a legislator or a body
15 dictating what the law shall be may forbid the doing
16 of or the failure to do an act and make its commission
17 or omission criminal without regard to the intent or
18 knowledge of the doer.³

19
20 But do we have before us now such law as
21 precludes the element of criminal intent? Does the
22 law that guides this Tribunal discount the element of
23 intent and provide that the mere doing of the act is
24 sufficient to constitute the crime? We submit the

- 25
1. 22 C.J.S. p. 86, Note 53.
2. Ibid.
3. Ibid.

1 answer is in the negative. For here we have no
2 legislator of the law. True a Charter has been pro-
3 mulgated in which the offenses charged are set forth.
4 But the prosecution has declared that these accused are
5 being placed in jeopardy for violation of existing
6 international law and that the Charter is merely
7 declaratory of that law.¹ Since the Charter does not
8 create the law but merely reiterates a portion of it
9 we must turn to the broad subject of international law
10 itself to determine whether or not it excludes the
11 element of criminal intent.

12 A study of the various sources of international
13 law does not reveal a single ground which could be used
14 as an argument against the acceptance of this godly
15 principle of justice. Indeed one of the sources of
16 such law is listed as justice, equity and good faith.²
17 If aggressive war is a crime under international law
18 and if there is individual liability for its accom-
19 plishment it would be strange indeed to preclude this
20 cosmopolitan principle of defense which has behind it
21 the wisdom of the ages. From the unwritten sources of
22 the common law it was fostered and developed through
23

24 1. Prosecution Argument para. B-5 - Tr. 39,013.

25 2. Mixed Claims Commission - United States and Germany
1922; Statute of Permanent Court of International
Justice 1936; Prosecution Argument para. B-6 -
Tr. 39,013.

1 sheer necessity and gauged to meet the common needs of
2 mankind for self-regulation. When the high courts of
3 today announce in no uncertain words that even statu-
4 tory law is to be construed in the light of the common
5 law and the existence of a criminal intent is to be
6 regarded as essential in order to make an act criminal,
7 even when not in terms required, there is no earthly
8 reason why it should here be ignored as a welcome safe-
9 guard against injustice.¹

10 The Charter itself while bearing a resemblance
11 to statutory law cannot for the reason stated be
12 properly construed as such. Yet accepting it as the
13 gospel of the law, in its reading we find no portion
14 which would tend to exclude the necessity for the estab-
15 lishment of criminal intent before an adjudication of
16 guilt can be rendered. The Tribunal by the acceptance
17 and use of this doctrine would establish strong and
18 fine international law serving as a restraint against
19 those who would later seek to misuse the law of indi-
20 vidual responsibility here sought to be enforced.

21 It was in view of the principle that an act
22 does not make the doer of it guilty unless the mind be
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24 1. 22 C.J.S. 87 N. 61, especially in the case of
25 crimes involving moral turpitude. Note 62. Seaboard
Oil Co. v. Cunningham C.C.A. Fla. 51 F. 2d 321.
52 S. Ct. 35.

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criminal that in our opening statement during the individual defense of the accused SHIMADA we proclaimed that the treasured and tightly-guarded prerogative of the nations of the world to judge for themselves what facts constitute a threat to their security was also a reservation which must be capable of inheritance by the individuals who compose the government of that nation itself. This uncontested and established reservation of nations must not be restricted to the moral defense of the national entities of the world but also must be made available to a struggling man whose life and freedom are endangered by the charge of individual responsibility for his participation in a decision of his government exercising that right. The element of individual intent here becomes of paramount importance.

Even though the pattern of conduct of a nation over the course of years is subject to condemnation it does not necessarily follow that one individual as a cog in the machinery of that government, serving for only a limited period, is likewise subject to castigation. There are so many modifying factors which dispel the theory of individual guilt invariably flowing from national guilt. It is more than specious reasoning which leads us to acknowledge that a nation or the government of that nation, through

1 a pyramiding parade of ill-considered past decisions
2 and actions may have created an insoluble condition
3 of affairs which, when thrust upon a new participant
4 in that government, is quite incapable of dissolution
5 by means short of hostilities.

6 In this respect Japan and its governmental
7 leaders differed from Germany. There the situations
8 arising from time to time were creations of a conti-
9 nuous group with one leader who held the same govern-
10 mental reins consistently over a period of years. No
11 newcomer was brought into the government upon whom
12 fell the task of providing a solution to a problem
13 parented by the actions of a different government or
14 group of men in the past. But here in Japan such did
15 frequently occur, a notable example being the induction
16 of Admiral SHIMADA into a cabinet post fifty days
17 before the commencement of the Pacific War and the
18 thrusting upon him of a lighted squib of international
19 disruption which had been thrown from hand to hand
20 as its flaming fuse approached the stage of explosion.

21 That he provided no answer to a problem that
22 had spelled defeat for so many others before him cannot
23 be a crime. The adoption of the solution of war cannot
24 be a crime. The adoption of the solution of war cannot
25 ipso facto spell out guilt, for such a conclusion
without a deep determination of the inner factual

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matters leading to that decision would render nugatory
 1 a cardinal principle of justice.

2 CHINA: 1928 - 1935.

3 11-a. While SHIMADA is charged with the
 4 planning, preparation and waging of a war of aggression
 5 against the Republic of China he is not charged with
 6 initiating such war.¹ Nor is he mentioned as one of
 7 the individuals who unlawfully ordered, caused or
 8 permitted the attack on the city of Nanking,² the city
 9 of Canton,³ the city of Hankow,⁴ the city of Changsha,⁵
 10 the city of Hengyang in the province of Hunan and the
 11 cities of Kweilin and Liuchow in the Province of Kwangsi,⁶

12 11-b. At the beginning of the Indictment
 13 years SHIMADA held the rank of captain commanding the
 14 cruiser TAMA.⁸ At the time of the Manchurian Incident,
 15 September 18, 1931, he was Chief of Staff of the
 16 Combined Fleet and First Fleet with the rank of rear
 17 admiral.⁹ In February of 1932 he served as Chief of
 18 Staff of the Third Fleet aboard the flagship of
 19 Admiral NOMURA, later Ambassador to the United States.¹⁰

20 1. Counts 6, 19, 27, 28; Tr. 38-39, 45, 50, 50-51.

21 2. Count 45, Tr. 60.

22 3. Count 46, Tr. 60-61.

23 4. Count 47, Tr. 61.

24 5. Count 48, Tr. 65.

25 6. Count 49, Tr. 65-66.

7. Count 50, Tr. 66.

8. Tr. 34, 647.

9. Tr. 34, 648.

10. Ibid.

1 In June 1932 he was appointed Chief of the Naval
2 Information Bureau and later in November of the same
3 year became Chief of the Operations Bureau.¹ The
4 prosecution has made no serious attempt to connect
5 SHIMADA with the early hostilities in China since
6 there is no evidence against him except the wearing of
7 his naval uniform.
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1. Ibid.

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1. Ibid.

China: 1935 - 1937

12-a. In December 1934 he became a vice-admiral and served as attached officer with the Naval General Staff from February 1935 until December at which time he became Vice-Chief.^{1.} Proof of his activities during his tenure as Vice-Chief of Naval General Staff is limited to such matters as were touched upon by the prosecution in their cross-examination of SHIMADA. Much extraneous matter such as whether the first trans-oceanic bombing took place at this time^{2.} or as to where the airplane units took off from in their bombing missions against China^{3.} or as to whether SHIMADA transmitted orders to his superior full Admiral HASEGAWA, then Commander in Chief of the China Fleet, to carry out the bombing of Nanking occupied much of the prosecution's attention.^{4.} It should be noted that SHIMADA is not named in count 45 charging the ordering, causing or permitting of the attack on Nanking. SHIMADA was not Vice-Chief of Naval General Staff when the Pancy was sunk.^{5.}

12-b. Such orders as were issued by the Naval General Staff were not created by SHIMADA.^{6.}

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|--------------|---------------------|
| 1. T. 34648. | 4. T. 34736. |
| 2. T. 34734. | 5. T. 34737, 34738. |
| 3. T. 34736. | 6. T. 34809. |

1 and the Vice-Chief of Naval General Staff had no
2 authority to issue orders to Admiral HASEGAWA.^{1.}

3 The orders came from the Chief of Naval General Staff
4 pertaining to all fleet operational matters and he,
5 as Vice-Chief, did not handle the transmission of
6 orders which were usually by telegraph.^{2.} Nor is
7 there evidence he formulated any policies.

8 13-a. At no time has the prosecution con-
9 nected SHIMADA with action pertaining to the 1937
10 China Incident, which would exclude him from their
11 statement previously given that the accused has been
12 charged with crimes against peace "only if he partici-
13 pated in the formulation of the aggressive policy of
14 the government, or if he, in the first instance, in-
15 duced the aggression which was subsequently made a
16 policy of the government."^{3.} The prosecution upon
17 receiving the answer from SHIMADA that he merely
18 acted under orders from then Chief of Naval General
19 Staff Prince FUSHIMI gave vent to their imagination
20 by entering upon a historical discussion of the as-
21 cension to office of Prince FUSHIMI in 1932 and his
22 succession by Admiral NAGANO in 1941.

23 1. T. 34809.

24 2. Ibid.

25 3. Prosecution Argument, para. K-3, T. 40540.

13-b. While it is difficult to see where Admiral SHIMADA fits into the picture here the prosecution concludes that he and "the rest of the navy and army militarists appear to have caused and to have later used these appointments of Imperial princes as Chiefs of Staff as a means of shielding the aggressive policies of the army and navy staffs from effective control or criticism."¹ This assumption, vague as it is, rests only upon the clouds of surmise and speculation without the support of the soil of evidence. A reading of the evidence reveals that it was this same Prince FUSHIMI who advised Navy Minister OIKAWA concerning the recommendation of SHIMADA as Navy Minister and it was also the same Prince FUSHIMI from whom SHIMADA requested advice as to whether to accept the assignment.² It may not be too bold to suggest that the prosecution should have reversed its theory.

Activities: 1937 - 1940.

14-a. SHIMADA terminated as Vice-Chief of Naval General Staff in December of 1937 and was assigned as Commander in Chief of the Second Fleet. A year later he was removed to the Kure Naval Station

1. Prosecution Argument para. TT-29, T. 41679.
2. T. 34652.

1 as Commander in Chief.^{1.} An analysis of these assign-
2 ments are revealing -- not of extraordinary advance-
3 ment^{2.} as the prosecution would have you believe --
4 but of systematic advances solidly coordinated with
5 his age, experience and seniority. No evidence is
6 directed against him during this period.

7 China: 1940 - 1941

8 14-b. In May of 1940 as vice-admiral he was
9 ordered to assume command of the China Seas Fleet
- 10 succeeding Admiral OIKAWA who was destined to become
11 Navy Minister under the Second and Third KONOYE Cabi-
12 nets and who in turn had succeeded Admiral HASEGAWA.
13 Six months later he became a full admiral.^{3.} It was
14 to this assignment lasting until September of the next
15 year that the prosecution attached some importance.
16 The prosecution went into some detail at the time of
17 cross-examination relative to his connection with
18 naval operations against China. At no time while
19 occupying this post has the defense ever claimed that
20 SHIMADA as Commander in Chief was not responsible in
21 chain of command for naval operations. Our only con-
22 tentation was that he was carrying out the dictate of
23

- 24 1. T. 34648.
25 2. T. 16900.
3. T. 34648.

his government in keeping with recognized rules of warfare.

15-a. It was sought to show SHIMADA perpetrated some offense by reason of the fleet blockade of the China Coast.^{1.} While not only is this act recognized as legal,^{2.} the defense established further that the policy of blockading the China Coast had been put into effect long before SHIMADA's time, being carried out by his predecessors, Admiral OIKAWA and Admiral HASEGAWA.^{3.} Instructions concerning visit, search and capture of vessels were issued by the proper naval authorities in terms fully complying with existing international law.^{4.} Thus the evidence is that SHIMADA continued the functions of his predecessors in this regard and he did not thereby execute a new operational procedure, much less formulate an operational policy. The purpose and object of the blockade was to prevent military supplies from going to Chungking.^{5.}

16-a. As to participation of the Fleet in bombing missions the established policy of the Japanese

1. T. 34740.

2. T. 21509 - 21512; 1932 ed. of American Naval War College International Law Situations with Solutions and Notes.

3. T. 34808.

4. Ex. 2545, T. 21529 - 21536.

5. T. 34739.

Navy was to direct such attacks against military objectives only.^{1.} Participants in the attack were under strict instructions to adopt all necessary measures toward the end of bombing exclusively military targets and each plane was instructed to carry maps of the streets edited by the Naval General Staff in order to ascertain the military objectives.^{2.} But this was not all. Not only were orders issued by the Naval General Staff pertaining to these matters but the Navy Ministry had issued written information entitled "Criteria in Air Fighting" designed to clarify the rules of aerial conduct and a supplementary guide entitled, "Miscellaneous Observations on Aerial Bombing," had been distributed with the force of an order.^{3.} SHIMADA gave the prosecutor a straight answer when he said the objectives of the bombing were "troops and military installations."^{4.} Not even by innuendo has the prosecution been able to show SHIMADA ordered the bombing of other than military objectives.

16-b. Hence, rather than the evidence indicating orders designed to establish a policy

1. T. 21401.
2. T. 21479.
3. T. 21508.
4. T. 34736.

1 of indiscriminate bombing it appears those in com-
2 mand, both at the time of SHIMADA's command and be-
3 fore, had taken such precautions as could reasonably
4 be expected. An answer to the rather ludicrous
5 question of the prosecution put to SHIMADA, "Do you
6 tell this Tribunal that no one in the City of Chung-
7 king was struck by the bombing or affected by it
8 from fire or otherwise?" was forestalled by the
9 Tribunal.^{1.} No one is naive enough to speculate
10 that civilian casualties can be avoided when mili-
11 tary objectives are situated within the city itself.
12 The test is whether or not this accused ordered the
13 attack of non-military objectives or negligently
14 permitted such. There is no evidence which would
15 support the prosecution's contention that he did so
16 order or permit.

17 17-a. In moving on to the next phase of
18 SHIMADA's career we trust we are not guilty of serious
19 misjudgment in ignoring what we consider as irrelevant
20 comments by the prosecution pertaining to his activi-
21 ties in China.

22 1. T. 34741.
23
24
25

Interim Between Commander in Chief of ^{ached}
China Seas Fleet and Assumption
of Navy Ministership.

17-b. After finishing his ordinary tour of
duty as Commander in Chief of the China Seas Fleet,
SHIMADA was ordered to return to Japan.^{1.} The
prosecution secured several newspaper clippings
which allegedly told of the return of SHIMADA on
September 15, 1941, and depicted his interview with
the Emperor.^{2.} It might well be said that the
accuracy of a newspaper story varies according to
the source of the subject matter, the accuracy of
the reporter and the editing of the publisher. In
any event such reports cannot be considered as the
most reliable evidence. Thus it is surprising that
the prosecution would attempt to press upon this
Tribunal these two documents as valid evidence re-
flecting the intention or thinking of the accused
SHIMADA on matters which followed later.^{3.}

1. T. 34742.

2. T. 34694.

3. T. 34694, 34695.

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1. T. 34742.

2. T. 34694.

3. T. 34694, 34695.

18-a. If, however, the prosecution attached
any real significance to the fact that SHIMADA made
a report to the Throne upon his return from China
they should have been content with the very solid
explanation given by Navy Minister OIKAWA when he
was cross-examined on this point. OIKAWA said it
was a common practice that a general report on operations
and operational matters be given to the Throne at
such times.² If there is any truth in the newspaper
articles which the prosecution seems to advocate as
their bible with verse and chapter revealing the
true mind and intent of SHIMADA, it is interesting
to note exactly what the contents of those articles
are.

18-b. In the first place SHIMADA did not
speak of action against China but rather he spoke
of the Japanese attack on the Chungking regime.³
He spoke of the losses in the war and his regrets.
He spoke the same as any military man might have
spoken for it was not his duty to return from the
fighting front and make an anti-governmental statement.
Such might well have been pure treason and hardly in
keeping with his sworn duty as a high-ranking military
man.

2. T. 34,594

3. T. 38,087, 38,088

19-a. What there is in these articles that
1 would show that SHIMADA was possessed of vicious
2 feelings toward the Western Powers escapes our attention.
3 Is it not understandable that a military man whose
4 objective was to end the China Affair according to
5 the dictate of his government would not feel
6 favorably disposed to any country or power that was
7 lending aid to the opposing forces and spilling the
8 blood of his own men? We must give him credit for
9 common sense at least and possessing the honest emotions
10 of an ordinary person. Is there one of us under
11 like or similar circumstances that would have felt
12 strongly in favor of those powers who were openly
13 supporting the enemy? Yet in spite of this there is
14 no evidence that SHIMADA at any time raised his voice
15 against the Western Powers.
16

17 19-b. To the contrary we have the testimony
18 of Admiral SAWAMOTO who recalled that in December
19 1940 as Commander in Chief of the Second Expeditionary
20 Fleet under the China Seas Fleet SHIMADA, as Commander
21 in Chief, called a meeting of the commanders of the
22 various units in Shanghai. During the course of that
23 meeting SAWAMOTO told this Tribunal in no uncertain
24 words that SHIMADA "clearly expressed vital interest
25 in the relations of Japan and the United States."

SHIMADA was very disturbed about the increasing
1 tenseness of the situation, said SAWAMOTO, and "I
2 remember he said there must not be a war between
3 Japan and the Western Powers."¹

4 20-a. This evidence was introduced by
5 the defense for the sole purpose of revealing the
6 true thinking of SHIMADA. The value of this
7 particular bit of testimony is enhanced by the fact
8 that the statement so made was given at a time when
9 SHIMADA had no cause to misrepresent or to speak
10 other than his true feelings for, as the witness
11 testified, it was merely a conversation which could
12 have had no bearing on the political situation of
13 the time.²

15 The Recommendation of SHIMADA as Navy Minister

16 20-b. SHIMADA finished his ordinary tour
17 of duty as Commander in Chief of the China Seas
18 Fleet and moved on to a new assignment as Commander
19 in Chief of the Yokosuka Naval Station.³ Having been
20 away from Japan for two years and never having held
21 a political assignment, a fact admitted by the
22 prosecution,⁴ SHIMADA frankly confessed that he knew

- 23
24 1. T. 34,607
25 2. T. 34,608
3. T. 34,649
4. T. 16,901

nothing of the inner fibers of the intense political
1 situation which then threatened to cause the fall
2 of the Third KONOYE Cabinet.⁵ Unquestionably his
3 entire naval career had been relegated to sea
4 assignments and service with the Naval General Staff.⁶

5 20-c. That the matters of government were
6 held in high confidence if not secrecy were attested
7 to by TOGO, who with wide experience in diplomatic
8 affairs and who must have had access to more contacts
9 than SHIMADA which would have given light to the
10 true international situation, testified that at the
11 time of joining the TOJO Cabinet he had no correct
12 knowledge of the progress of the Japanese-American
13 negotiations.¹ Thus the evidence is uncontested
14 that SHIMADA had no inside knowledge of the serious
15 state of affairs with the accompanying issues and
16 could have formed no preconceived opinion on them
17 before accepting the position of Navy Minister.²

18 21-a. It is well to note that no Navy
19 Minister of Japan has ever been other than a senior
20 officer on the active list.³ The Ordinance of 1936

- 21 5. T. 34,650
22 6. T. 34,609
23 1. T. 35,666
24 2. T. 34,649
25 3. T. 34,571

making such mandatory in no way influenced the Navy
 1 because they had followed this procedure as a matter
 2 of custom and tradition from the very beginning.⁴
 3 The duty and obligation of recommending a Navy Minister
 4 was in the hands of the outgoing Navy Minister.⁵
 5 After the Navy Minister had made a recommendation as
 6 to his successor such nomination was tantamount to
 7 appointment for it was inherently mandatory upon the
 8 Premier who had no actual choice in the matter.⁶ Thus
 9 it was that this peculiar tradition of the Japanese
 10 Navy which necessarily limited the field of candidates
 11 for the Navy Ministership expressed itself in a
 12 telephone call received by SHIMADA on October 17th,
 13 1941.⁷

15 22-a. It was but several weeks after
 16 assuming his new command at Yokosuka that SHIMADA
 17 received the order to report to the Navy Ministry
 18 in Tokyo. Upon being received at the Navy Ministry
 19 he was told by Navy Minister OIKAWA that he was
 20 OIKAWA's choice to become the next Navy Minister
 21 in a new cabinet to be formed.¹ It was after a short
 22 talk with Admiral OIKAWA that SHIMADA explained his

- 24 4. T. 34,571
- 5. T. 34,570
- 25 6. T. 36,525
- 7. T. 34,649
- 1. T. 34,650

position saying he felt himself unqualified for the²
 post because of his long absence from Japan. He²
 thereupon refused the recommendation which fact is
 confirmed not only by SHIMADA's testimony but by
 OIKAWA himself.³ Not only did SHIMADA refuse the
 appointment but he asked Admiral OIKAWA to continue
 on as Navy Minister⁴ and this also is confirmed⁵
 by OIKAWA and unchallenged by the prosecution.⁵

22-b. OIKAWA however had decided as a⁶
 matter of political morality not to succeed himself.⁶
 The Chief Prosecutor himself assumed the task of
 cross-examining OIKAWA and in answer to the question
 as to what he meant by political morality OIKAWA said
 that matters had become so complicated that a new
 cabinet starting afresh and wiping the slate clean
 made inadvisable the participation of the old members⁸
 in the new government. Furthermore OIKAWA had been⁸
 Navy Minister under two different cabinets each of
 which had resigned and it was quite understandable
 that he felt it necessary for a new man to take over
 his burdensome job.¹

2. Ibid.

3. T. 34,572.

4. T. 34,650.

5. T. 34,572.

6. T. 34,570.

7. T. 34,591.

8. Ibid.

1. T. 34,570, 34,571.

1 He also made it clear that his decision not to succeed
2 himself as Navy Minister was arrived at before he
3 knew TOJO was to become the new premier.²

4 23-a. The thing that has stung SHIMADA
5 throughout this case is the prosecution's charge
6 that he was selected as Navy Minister "because he
7 was, and was known to be, an active supporter of the
8 TOJO policy."³ Although the prosecution readily
9 made this statement they attempted to offer no evidence
10 in support thereof. Even though their allegation
11 had not the benefit of evidence the defense could
12 not rest without destroying the unjustified inference
13 that may follow this unwarranted statement. It was
14 therefore that the man who recommended SHIMADA was
15 called to the witness box for the purpose of reciting
16 in detail how the appointment occurred. The prosecution
17 also must have interrogated Admiral OIKAWA on this
18 point in the days before the trial but it nevertheless
19 did not prevent their making the statement.

20 23-b. At this time SHIMADA was a full
21 admiral on the active list. Other than the present
22 Navy Minister there were eight other admirals ahead
23 of him in seniority.⁴ Starting with the oldest in
24

- 25 2. Ibid.
3. T. 16,905.
4. T. 34,571.

seniority Prince FUSHIMI, Admiral OIKAWA related
1 to this Tribunal exactly why each of the eight was
2 disqualified by him in regard to their possible
3 selection.⁵ The prosecution did not question OIKAWA
4 on his reasoning and explanation.⁶ The Chief
5 Prosecutor was frank to admit when OIKAWA took the
6 stand and subjected himself to cross-examination that
7 OIKAWA was a key witness.¹ His solid testimony,
8 admittedly of vital importance is worthy of complete
9 study.
10

11 24-a. Admitting that in regard to the
12 question of war or peace the Army took one view and
13 the Navy another the prosecutor was unable to in any
14 way infer from his cross-examination of OIKAWA that
15 the appointment of SHIMADA was other than the
16 voluntary choice of Admiral OIKAWA, the very man whom
17 the prosecution had just stated took that stand for
18 peace.² If SHIMADA had desired to change the existing
19 policy of the Navy, if he was the aggressive man the
20 prosecution would now have you believe he is, would
21 he have requested Admiral OIKAWA to remain in office
22 as Navy Minister? Or would he have been selected by
23

24 5. Ibid.

25 6. T. 34,575 et seq.

1. T. 34,579.

2. Ibid.

1 OIKAWA as his successor if OIKAWA believed him to be
2 in discord with the established naval views? Does it
3 sound reasonable that aggressive, war-like SHIMADA,
4 as the prosecution has painted him, would have
5 refused the appointment as Navy Minister, would
6 have turned down this golden opportunity to give vent
7 to his aggressive intent?

8 24-b. SHIMADA then, on the evening of
9 October 17th, 1941, having told Admiral OIKAWA that
10 after a period of four years away on routine naval
11 assignments he did not feel his knowledge of the
12 political situation at home or of the international
13 complications was sufficient to qualify him, together
14 with the statement that he had never served in the
15 Navy Ministry and had a distaste for politics with no
16 desire to become involved in that line of work,
17 returned to his Tokyo home.¹ But on the following
18 morning he was again summoned to the Navy Minister's
19 official residence where not only Admiral OIKAWA
20 met him but also Chief of Naval General Staff Admiral
21 NAGANO.² On this occasion Admiral NAGANO himself urged
22 SHIMADA to accept the recommendation telling him that
23 it was his duty as a high-ranking admiral to do so.
24

25 1. T. 34,650

2. T. 34,651

1 SHIMADA however told NAGANO, as he had told OIKAWA,
2 that he did not feel himself qualified. Thereupon
3 NAGANO and OIKAWA told SHIMADA that Prince FUSHIMI,
4 then the oldest and most respected of naval officers,
5 had surveyed the field of candidates and determined
6 that SHIMADA was the logical one.³ At the same time
7 as these conversations were taking place at the Navy
8 Minister's official residence several telephone calls
9 came in from the Cabinet Formation Headquarters urging
10 that a candidate for Navy Minister be recommended
11 as soon as possible since all of the other ministers
12 of the new cabinet had been determined.⁴

13 25-a. SHIMADA told this Tribunal that at
14 the time he hesitated and was greatly perplexed. He
15 said he realized that he actually was one of the few
16 senior naval officers available for the high post and
17 that the fact that Prince FUSHIMI, Admiral OIKAWA and
18 Admiral NAGANO had all asked him to accept bore heavily
19 on his mind. In considering these factors he said
20 he reversed his earlier decision and agreed tentatively
21 to accept the recommendation.¹ He then went to consult
22 Prince FUSHIMI personally and there discussed with him

24 3. Ibid.

25 4. Ibid.

1. T. 34,651, 34,652.

1 the matter of acceptance or refusal of the Minister-
2 ship. The Prince himself urged him to accept the
3 post.²

4 26-a. SHIMADA has told this Tribunal in
5 a straight-forward fashion and unchallenged by the
6 prosecution that he did accept the assignment although
7 it was "never solicited, initially refused and in fact
8 was an unwanted and unwelcome assignment."³ These
9 statements by Admiral SHIMADA are fully substantiated
10 by the testimony of Admiral OIKAWA.⁴ After the
11 refusal OIKAWA said he told SHIMADA to consider the
12 matter overnight and that the next morning he called
13 SHIMADA again to the official residence where the
14 conversations were resumed as SHIMADA has related.⁵

15 26-b. The prosecution assertion therefore
16 that there was any connection between TOJO and SHIMADA
17 either personally or through mutual political interest
18 falls with a sounding thud. OIKAWA himself, referring
19 to this matter said "there is absolutely no truth to
20 the allegation that Admiral SHIMADA was appointed
21 because TOJO wanted him to be. To my knowledge Admiral
22

23 2. Ibid.

24 3. T. 34,652

25 4. T. 34,572

5. T. 34,573

1 SHIMADA and TOJO were not even acquainted at that
2 time.⁶ As for SHIMADA's own personal statement on
3 the matter he said, after quoting the prosecution
4 allegation, that it was "entirely unwarranted and
5 not founded upon fact."¹

6 27-a. SHIMADA said that he didn't know
7 TOJO having met him only once and for a few moments
8 in Shanghai in 1940. He testified that it would have
9 been impossible for the Premier, an Army man, to
10 even suggest a certain individual in the Navy for the
11 post of Navy Minister since it would have met with
12 violent opposition as a blow to the Navy's prestige
13 and also because of the natural rivalry and opposing
14 viewpoints of the two branches of the armed services.²

15 27-b. Even after agreeing to accept the
16 post of Navy Minister SHIMADA was not content to pick
17 up the working of the office without first exacting
18 a condition from the new Premier TOJO. He states that
19 immediately after informing OIKAWA on the morning
20 of the 18th that he would accept the recommendation
21 he went to visit TOJO for the purpose of laying down
22 a prerequisite for his acceptance of the Navy Ministership.³

24 6. T. 34,572.

25 1. T. 34,653

2. Ibid; T. 36,525

3. T. 34,654

SHIMADA even gives the time of day when this conversation with TOJO took place and he said that he spoke to TOJO personally telling him that he would insist that negotiations with the United States be pursued to the utmost with the firm determination of seeking a peaceful solution to the difficulties between the two countries before he would accept the post.⁴

4. Ibid.

28-a. OIKAWA stated that SHIMADA and he
continued their conversations relative to the Navy's
views on pending negotiations with the United States
and the need of arriving at a peaceful solution of the
difficulties if possible and that he and SHIMADA were
in full agreement.^{1.} OIKAWA states that SHIMADA then
went to see Premier TOJO laying down his prerequisites
of acceptance. SAWAMOTO also states that he personally
knew that on the morning of October 18th after agreeing
to accept the Ministership, SHIMADA went to see TOJO
for the purpose of laying down the prerequisite of
acceptance of the post of Navy Minister.^{2.}

28-b. TOJO agreed with SHIMADA and as SHIMADA
testified: "TOJO emphatically agreed that it would be
the policy of the government to start from scratch in
attempting to wholeheartedly and sincerely reach a
diplomatic understanding to the end of preventing war
in accord with the Emperor's wish."^{3.}

SHIMADA states that he was relieved and felt
that the Army and Navy were in complete agreement on
this point which had essentially led to the downfall of
the KONOYE Cabinet.^{4.}

(1. T. 34573.

2. T. 34610.

3. T. 34654, 35671 (TOGO; 30603 (KAYA); 36311 (TOJO)

4. T. 34654.)

1 28-c. SHIMADA's testimony if fully supported
2 by that of SAWAMOTO who also states that upon returning
3 from his visit to TOJO, SHIMADA related to him that TOJO
4 "had completely agreed with him and they were going to
5 adopt a policy of making utmost concessions to the
6 United States in order to avert war." SAWAMOTO states
7 that "we were all highly pleased."^{1.} TOJO also
8 supports this statement for upon cross-examination he
9 said that SHIMADA came to him before acceptance of the
10 Navy Ministership and insisted that there be an under-
11 standing that negotiations with the United States be
12 carried out.^{2.}

13 29-a. Thus are the facts surrounding SHIMADA's
14 appointment to the post of Navy Minister. It would
15 appear that not only was SHIMADA reluctant to accept
16 the assignment, not only did he refuse initially urging
17 OIKAWA himself to remain but that even after acceptance
18 he did all that any man could do to see that his
19 position in the new cabinet would be in accordance with
20 the policy of peace.

22 29-b. As to SHIMADA's attitude or state of
23 mind at the time of joining the cabinet he himself
24 summed it up nicely when he said that he did not have
25 the impression that he was joining a war cabinet under

(1. T. 34610.

2. T. 36523.)

1 which the nation would be plunged into the bitter and
2 tragic struggle that followed but that he thought from
3 the very military strength of the government itself that
4 it would exhaust the last possibility of peaceful efforts
5 to settle the dispute and that it could do so because of
6 its control.^{1.}

7 29-c. OIKAWA who is neither an accused or
8 potential accused would hardly have come into this Tri-
9 bunal and testified on behalf of SHIMADA substantiating
10 as he did word for word SHIMADA's testimony if he had
11 felt that SHIMADA had gone contrary to the stand for
12 peace that he himself had previously taken. OIKAWA
13 stated that SHIMADA and he shared the same view and that
14 the ultimate decision of the Navy to fight was entirely
15 dependent upon the then existing international situation
16 which took a violent turn for the worse.^{2.} Then too
17 there is the testimony of SAWAMOTO who served both under
18 OIKAWA and SHIMADA in the capacity of Vice-Minister of
19 Navy and who certainly must be in a position to under-
20 stand the full views of both Navy Ministers and how they
21 correlated with the attitude of the Navy at the time.
22 It is the prosecution itself who characterizes the
23 position of the Navy as one for peace.^{3.}

- 24
25 (1. T. 34655.
2. T. 34574.
3. T. 34579.)

30-a. The Navy was traditionally opposed to political matters and refrained from participation in-
sofar as such was possible.^{1.} Even at the time of the fall of the Third KONOYE Cabinet the evidence reveals that Admiral OIKAWA as Navy Minister left the decision of war or peace to the Prime Minister himself. Since at that time Prime Minister Prince KONOYE favored continuation of negotiations the outcome was the fall of that cabinet in opposition to the Army. If the same policy adopted by Admiral OIKAWA had been followed in the TOJO Cabinet, that is, leaving the matter to the Prime Minister as the head of the government the result would have depended entirely upon the attitude of the Prime Minister. As it so happened SHIMADA did not leave the matter to the Prime Minister as had been done in the previous cabinet but even before entrance laid down his prerequisite demanding that negotiations be carried on.^{2.} It was the turn of events, the factual situation which was the result of the pyramiding parade of past decisions and events that led to the situation confronting SHIMADA at that time.^{3.}

31-a. Reciting that SHIMADA was not well informed on the naval situation SAWAMOTO testified that

- (1. T. 34669.
2. T. 34654, 34610.
3. T. 34574.)

1 during the first days of SHIMADA's tenure of office he
2 explained the full situation to SHIMADA and that they
3 talked together quite often.^{1.} He said that he knew
4 SHIMADA's avowed intention at the time of assuming the
5 post of Navy Minister was no different than his prede-
6 cessor Admiral OIKAWA. Such statement was not challenged
7 by the prosecution.

8 31-b. The evidence reveals that SHIMADA very
9 shortly after becoming Minister called a meeting of
10 the higher ranking officers of the Navy Ministry and
11 the Naval General Staff and told them of his determination
12 to push the peace talks and outlined the navy policy
13 which was exactly in keeping with the Navy's views under
14 the old cabinet.^{2.} SAWAMOTO told this Tribunal that
15 SHIMADA said that he would resign his post if elements
16 opposed to exhausting every effort toward achieving
17 peace through diplomacy became too strong.^{3.}

18 32-a. Up to this point therefore do we have
19 a criminal, a man guilty of violating international law,
20 accused of the most infamous of crimes, or do we have a
21 man who sincerely, honestly and in a normal fashion be-
22 fitting his rank and assignment sought to carry out his
23 duties as a prudent and reasonable man would have done?
24

25 (1. T. 34609.
2. T. 34609.
3. T. 34610.)

1 The prosecution cannot ignore these facts. So we urge
2 the Tribunal to accept these undisputed facts for they
3 are matters of extreme importance to the accused
4 SHIMADA as bearing upon his later decision for war.

5 The TOJO Cabinet from October 23rd to
6 November 5th, 1941.

7 32-b. SHIMADA testified in some detail con-
8 cerning his activities at the Liaison Conferences be-
9 ginning October 23, 1941. He frankly told the Tribunal
10 that the vital issues then present were not of his
11 creation nor had he even a minor part in their formation
12 unless as he states "my lifelong career in the Navy
13 qualifies me as responsible."^{1.} His wording cannot be
14 improved upon as expressing the exact state of affairs
15 at that time when he said the problems facing them had
16 already crystallized and his only function was to
17 attempt a solution of them in his new capacity as Navy
18 Minister. The days that followed in pursuance of this *
19 task were the most taxing and trying of his life.^{2.}
20

21 33-a. The first period, as he puts it, was
22 from October 23rd until the Imperial Conference of
23 November 5th.^{3.} During that period of time his thoughts
24 were focused on two main problems, the first being how

25 (1. T. 34656.
2. T. 34656.
3. Ibid.)

1 best to ease the difficult conditions of withdrawal of
2 troops from abroad and to reconcile this with the views
3 of the Army. The second concerned the greatest possible
4 concession that Japan could afford to make in order to
5 bargain for an agreement with the United States. He
6 recognized that the greatest difficulty concerned the
7 withdrawal of troops from China and French Indo-China.^{1.}

8 33-b. What did SHIMADA do during these times
9 to the end of formulating his opinions and decisions?
10 He tells the Tribunal that he attempted to ascertain
11 the general sentiment of naval circles, that he ob-
12 served the thinking of the other members of the govern-
13 ment and took into consideration the trend of public
14 opinion at the time. Therefore, besides his own mental
15 processes he points to three important factors which
16 influenced him - the people, the government itself and
17 the Navy.^{2.} He concluded the best solution, therefore,
18 was a compromise with the United States and Great
19 Britain with each side giving ground.^{3.} But there was
20 a strong prevailing opinion that the matters had devel-
21 oped so far as to make it physically and psychologically
22 impossible to withdraw all of the forces from China.^{4.}

24 34-a. It was argued that it would have

- 25 (1. T. 34657.
2. Ibid.
3. T. 34657.
4. Ibid.)

amounted to a victory for China over Japan and would
1 have raised the prestige and standing of the United
2 States and Great Britain in the Far East thereby relegating Japan to a dependent position for its economic
3 existence and position as a world power.^{1.} His thinking
4 at the time was that it would be advisable to
5 effect a compromise by a strategic withdrawal from
6 China over a period of time and to effect an immediate
7 withdrawal from French Indo-China.^{2.} But this had to be
8 correlated with opposition to such a step.^{3.} To
9 SHIMADA's thinking there was no doubt that if these
10 steps were possible the present government would be
11 making deep concessions which had not been possible at
12 the time of the preceding Third KONOYE Cabinet.^{4.}

13
14
15 34-b. The evidence shows that the most
16 important of the issues relative to the downfall of the
17 Third KONOYE Cabinet as expressed by Admiral TOYODA,
18 then Foreign Minister, was the question of withdrawal
19 of troops.^{5.} The Japanese proposal of September 25th,
20 1941, made at the time of the Third KONOYE cabinet
21 stipulated that the stationing of Japanese troops and
22 naval forces in China would be maintained for an

23 (1. Ibid, 34658.

24 2. T. 34658.

25 3. Ibid.

4. Ibid.

5. T. 25490, Ex. 291.)

1. unnamed period of time. SHIMADA's concurrence in
 1 what later were called proposals A and B were indeed
 2 improvements upon the efforts of the KONOYE Cabinet. 2.

3 35-a. Admiral TOYODA, the Foreign Minister of
 4 the Third KONOYE Cabinet, on October 13, 1941, in his
 5 message to the High Command had proposed the withdrawal
 6 of troops from China within a two year period, 3. and
 7 opposed the further dispatch of troops to French Indo-
 8 China. 4. SHIMADA early in December, 1940, while
 9 Commander in Chief of the China Seas Fleet had opposed
 10 the further dispatching of troops to French Indo-China 5.
 11 and the withdrawal of troops from China over a period
 12 of time together with the immediate withdrawal from
 13 French Indo-China was voiced later when he was Navy
 14 Minister. 6.

16 35-b. The proposal concerning the withdrawal
 17 of most of the Japanese forces from China within a two
 18 year period was incorporated in proposal A. 7. This
 19 proposal with its complete contents was a revision of
 20 the former proposal of September 25th and if nothing
 21 else indicated an attempt at making concessions regard-

- 22 (1. T. 25938, Ex. 1245-E.
 23 2. T. 25978, 36327.
 24 3. T. 25915.
 25 4. T. 25914, 25915.
 5. T. 34607, 34608.
 6. T. 34658.
 7. T. 25978.)

1. From
less of the criticism attached to them.
1 October 23rd until November 5th long and continuous
2 liaison conferences were held.
3 2. Much discussion was
4 had concerning the possibility of acceptance of
5 proposals A and B by the United States
6 3. and there
7 were those who were of the opinion that preparations
8 for war should be put into effect even at the same
9 4. time the negotiations for peace were being made.

10 THE PRESIDENT: We will adjourn until half
11 past nine tomorrow morning.

12 (Whereupon, at 1600, an adjourn-
13 ment was taken until Friday, 26 March 1947
14 at 0930C.)
15
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23

24 - - -
25

1. T. 25,966, Ex. 2925
2. T. 34,656
3. T. 25,949
4. T. 25,951, 34,658